
IDEA PART B FUNDING MANUAL

Idaho State Department of Education

Division of Federal Programs

SPECIAL EDUCATION



IDAHO STATE DEPARTMENT OF EDUCATION
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Idaho State Department of Education IDEA Part B Funding Manual

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 16 2011

Dr. Bill East, Executive Director
National Association of State Directors of
Special Education, Inc.
1800 Diagonal Road, Suite 320
Alexandria, Virginia 22314

Dear Dr. East:

I am writing in response to your letter to me dated February 17, 2011, requesting a written response to your question about the local educational agency (LEA) maintenance of effort (MOE) requirement in 34 CFR §300.203(b).

In your letter, you ask about the following scenario:

An LEA fails to meet their maintenance of effort. As a result, the LEA pays the State educational agency (SEA) an amount equal to the shortage. The SEA then returns the money to the U.S. Department of Education.

Question: In determining the base amount that the LEA must spend the following year, do they maintain the base amount from the previous year, or reset the base amount to reflect the lower amount actually spent the previous year?

Under section 613(a)(2)(A)(iii) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §300.203(a), except as provided in 34 CFR §§300.204 and 300.205, funds provided to an LEA under Part B of the IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year. While the IDEA does not contain a specific provision that addresses the circumstance you raise with respect to LEAs¹, the Department must rely on the plain language of the statute and regulation with regard to the level of expenditures, which provide that an LEA may not reduce its level of expenditures for the education of children with disabilities "below the level of those expenditures for the preceding fiscal year." See section 613(a)(2)(A)(iii) and 34 CFR §300.203(a). Under this language, the LEA, in the fiscal year immediately following the fiscal year in which it failed to maintain effort, is obligated to expend no less than the amount it expended *in the prior fiscal year* for the education of children with disabilities from either local funds only, or from State and local funds. It is not obligated to expend at least the amount it expended in the last fiscal year for which it met the maintenance of

¹ With respect to State-level maintenance of financial support, the IDEA specifically addresses what level of support the State must maintain in a year following a year in which the State fails to maintain its required level of support. Section 612(a)(18)(D) provides that the State's level of support remains the level "that would have been required in the absence of" the failure to maintain support.

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Idaho State Department of Education

IDEA Fiscal Accountability Overview

The Idaho SDE must ensure fiscal accountability at each phase in the distribution and use of IDEA Part B and Preschool funds. The SDE has established policies and procedures for calculating, allocating, requesting, accessing, reporting and verifying IDEA Part B flow-through and discretionary funds. The purpose of the SDE's online IDEA Funding Manual is to provide a comprehensive overview of fiscal policies, procedures, and mechanisms by which SDE accounts for IDEA funds requirements, including:

Use of Amounts

- Ensure LEAs use IDEA funds only to pay excess costs of providing special education and related services to children with disabilities [34 CFR §§300.16 & 300.202]
- Ensure IDEA funds are used to supplement and not supplant state, local and other federal funds [34 CFR §§300.162(c), 300.202(a)(3)]
- Ensure that funds provided to an LEA under Part B must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year [34 CFR §§300.203]
- Ensure the proper use of exceptions and adjustments to maintenance of effort [34 CFR §§300.204 - 300.205]
- Prohibit reduction in the level of expenditures under 34 CFR 300.205(a) if LEA is not meeting Part B requirements [34 CFR §300.608(a) & 34 CFR §300.205(c)].

Allowable Costs

- Ensure that costs are necessary, reasonable and allocable [2 CFR 200.403-405]
- Time and Effort Reporting [2 CFR 200.430(i)]
- Equipment/Inventory Control [2 CFR 200.313(c)-(e)].

Private School Proportionate Share

- Ensure that LEAs properly determine the proportionate share of IDEA funds to be spent on equitable services [34 CFR §300.133]
- Ensure proportionate share funds do not benefit a private school [34 CFR §300.141]
- Ensure appropriate use of public and private school personnel [34 CFR §300.142]
- Ensure LEAs control and administer the funds used to provide equitable services and hold title to and administer materials, equipment, and property purchased with those funds [34 CFR §300.144(a)].

Coordinated Early Intervening Services

- Permit LEAs to use funds to develop and implement coordinated, early intervening educational services (CEIS) in accordance with 34 CFR §300.226 [34 CFR §300.208(a)(2)]
- Require any LEA identified as having significant disproportionality to reserve the maximum amount of funds to provide CEIS [34 CFR §300.646(b)(2)]
- Ensure that LEAs using CEIS funds use those funds in accordance with 34 CFR §300.226(b) and annually report in accordance with 34 CFR §300.226(d) [34 CFR §300.226].

Schoolwide Programs

- Ensure appropriate calculation and use of funds for schoolwide programs under section 1114 of the ESEA [34 CFR §300.206 (a) & (b)]
- Ensure LEAs using Part B funds for schoolwide programs provide children with disabilities services in accordance with a properly developed individualized education program (IEP) and all the rights and services afforded under IDEA [34 CFR §300.206(c)].

Additional Fiscal Requirements

- Timely Obligation and Liquidation [EDGAR 34 CFR §§76.703, 76.707-76.710]

- Financial Management Systems [2 CFR 300.302]
- Audit Requirements 2 CFR 200.501
- State Audit Requirements
- Cash Management/Efficient Transfers [31 CFR Part 205]
- LEA Application and Assurances [34 CFR §300.200 & EDGAR 34 CFR §§76.400 - 76.401 & GEPA 34 CFR §300.221]
- LEA Policies, Practices, and Procedures [34 CFR §300.201
- Fiscal record retention 2 CFR 200.305].
- Debarment, suspension, and other responsibility matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 2 CFR Part 180, as adopted at 2 CFR Part 3485, for prospective participants in primary covered transactions.

- A. The applicant certifies that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and
- B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Allocations of IDEA Part B and Preschool funds to School Districts and LEAs

Each year, Idaho receives grants under Section 611 of the Individuals with Disabilities Education Act (IDEA). The manner in which the amount of that state allocation is determined, as well as the required maximum and minimum amounts for

- State Administration
- Other State-level activities
- High Cost Fund and
- Sub-awards to LEAs

is outlined in 34 CFR §300.703 of the IDEA regulations.

After setting aside necessary and allowable amounts for state administration and other state-level activities (as described in 34 CFR §300.704(b), the State Department of Education (SDE) must allocate the remainder of the grant as flow-through subawards to Idaho school districts and LEAs. The funding formula that the state is required to use in calculating these subawards is outlined in 34 CFR §300.705.

The funding formula may be summarized as follows:

- Each LEA receives a Base Payment. This is a predetermined amount equal to 75% of the total grant that the state received in FY 1999-2000. That amount is \$14,289,101. The base amount for individual LEAs was determined according to the funding formula that was applied to the total in 1999. However, as new charter LEAs come into existence each year, the base amounts of individual districts is adjusted based on a determination of which districts would have otherwise been responsible for providing services to the children in special education in the new charter LEAs.
- The remainder of the total after this base amount is allocated, is distributed as follows:
 - 85% on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction.
 - 15% on the basis of their relative numbers of children living in poverty, as determined by the SEA.

The chart below demonstrates how the distribution works:

Total Part B Grant to State	52,689,101.00
Amount for Admin	900,000.00
Amount for other State-level activities	4,500,000.00
Amount for flow-through to LEAs	47,289,101.00
Base award amount	14,289,101.00
Enrollment/Poverty amount	33,000,000.00
85% allocation based on enrollment	\$ 28,050,000.00
Total public + private elem & secondary enrollment statewide	280,500
Per student enrollment amount	\$ 100.00
The amount of the individual LEA's enrollment portion is determined by multiplying its public + private elementary and secondary enrollment by \$100.00.	
15% allocation based on poverty	\$ 4,950,000.00
Total number of students living in poverty	150,000
Per student poverty amount	\$ 33.00
The amount of the individual LEA's poverty portion is determined by multiplying the number of children in the district living in poverty* by \$33.00.	
*With a few exceptions for charter schools that do not operate a free and reduced lunch program, the number of children living in poverty is determined by free and reduced lunch program data reported to the Division of Child Nutrition.	

In addition to the above Part B funds that may be used for providing special education and related services to children ages 3-21, Idaho receives an annual Preschool grant under section 619 of IDEA. This is a much smaller grant and these funds may only be used to provide special education and related services to children ages 3-5. Although this grant allows for certain amounts to be set aside for state administration and other state-level activities, Idaho has historically flowed 100% of the award through to LEAs.

The LEA funding formula for Preschool allocations is found at 34 CFR §300.816, and is very similar to that described above, with the exception that the base amount is equal to equal to 75% of the total Preschool grant that the state received in FY 1997-1998.

The period of availability for these grants is from July 1st of the award year until September 30th two years subsequent. Additional information regarding these grants is listed below:

Grant	Leg Authority	Program Title	CFDA #
IDEA Part B (3-21)	PL 108-446	Special Education - Grants to States	84.027A
IDEA Preschool (3-5)	PL 108-446	Special Education - Preschool Grants	84.173A

Allowable Uses of IDEA Part B Funds and Guide to IFARMS Accounting Codes

Federal Regulation:

§300.202 Use of amounts.

- (a) General. Amounts provided to the LEA under Part B of the Act -
- (1) Must be expended in accordance with the applicable provisions of this part;
 - (2) Must be used **only to pay the excess costs** of providing special education and related services to children with disabilities...; and
 - (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

What are Excess Costs?

For a particular cost to be allowed, it must be an excess cost of providing special education and related services. Only allowed costs may be charged to IDEA Part B or Preschool grants.

When determining whether a cost is an excess cost, ask the following guiding questions:

In the absence of special education needs, would this cost exist?

If the answer is...

- No, then the cost is an excess cost and may be eligible.
- Yes, then the cost is not an excess cost and is not allowed.

Is this cost also generated by students without disabilities?

If the answer is...

- No, then the cost is an excess cost and may be eligible.
- Yes, then the cost is not an excess cost and is not allowed.

If it is a child specific service, is the service documented in the student's IEP?

If the answer is...

- Yes, then the cost is an excess cost and may be eligible.
- No, then the cost is not an excess cost and is not allowed.

Note: These same excess cost definitions are applied to state and local fund costs in determining amounts for LEA Maintenance of Effort.

For a particular cost to be allowed, it also must be *necessary* and *reasonable* for proper and efficient performance and administration of the grant. A cost is reasonable if it does not exceed what a district would normally incur in the absence of federal funds. [2 CFR 200 403.405 and 34 CFR 76,703-710]

IFARMS Accounting Codes and Allowable Uses of IDEA funds

Notwithstanding the notable exceptions listed in IDEA part B, the excess cost principle is the fundamental guide in determining allowable uses of these funds, as listed below.

Fund	Program Code	Object Code	Description
257	IDEA Part B Special Education funds for 3-21 year olds		
	521	Special Education Program (School Age)	
		100	Salaries <ul style="list-style-type: none"> Special Education Teachers and Paraprofessionals
		200	Benefits <ul style="list-style-type: none"> Special Education Teachers and Paraprofessionals
		300	Purchased Services <ul style="list-style-type: none"> Contracts with other districts, public or private agencies or individuals for instructional services to students with disabilities, provided that such services are on the students' IEPs and meet state and federal standards Child Find materials, including media releases, to increase public awareness of disabilities and community services available (child find costs may not be paid from the proportionate amount for providing services to children with disabilities in private schools.) Policy and procedures manuals and brochures describing Special Education programs available, eligibility standards and referral procedures used by LEAs. Travel/mileage costs for LEA Special Education staff. Repairs to equipment used in Special Education programs.
		400	Supplies and Materials <ul style="list-style-type: none"> Screening materials for identifying students with disabilities Testing/Assessment supplies Educational supplies and curriculum-related materials directly involved with implementing IEPs Computer software Technology for administrative case management.
		500	Capital Objects <ul style="list-style-type: none"> Educational equipment directly related to the IEPs of students with disabilities Computer hardware for use by students with disabilities and special educators Specialized equipment that enables students with disabilities to access and/or participate in school programs (examples: wheelchairs, portable toilets, ramps, prone standers.) Testing and assessment instruments and curricula Technology for administrative case management.
258	IDEA Part B Special Education funds for 3-5 year olds only		
	522	Special Education Preschool Program	
		100	Salaries <ul style="list-style-type: none"> Special Education Teachers and Paraprofessionals in Preschool programs
		200	Benefits <ul style="list-style-type: none"> Special Education Teachers and Paraprofessionals in Preschool

			Programs
		300	Purchased Services <ul style="list-style-type: none"> • Contracts with other districts, public or private agencies or individuals for instructional services to students with disabilities, provided that such services are on the students' IEPs and meet state and federal standards • Child Find materials, including medial releases, to increase public awareness of disabilities and community services available (child find costs may not be paid from the proportionate amount for providing services to children with disabilities in private schools) • Policy and procedures manuals and brochures describing Special Education programs available, eligibility stands and referral procedures used by LEAs • Travel/mileage costs for LEA Special Education staff • Repairs to equipment used in Special Education programs.
		400	Supplies and Materials <ul style="list-style-type: none"> • Screening materials for identifying students with disabilities • Testing/Assessment supplies • Educational supplies and curriculum-related materials directly involved with implementing IEPs • Computer software • Technology for administrative case management.
		500	Capital Objects <ul style="list-style-type: none"> • Educational equipment directly related to the IEPs of students with disabilities • Computer hardware for use by students with disabilities and special educators • Specialized equipment that enables students with disabilities to access and/or participate in school programs (examples: wheelchairs, portable toilets, ramps, prone standers) • Testing and assessment instruments and curricula • Technology for administrative case management.
257 or 258	IDEA Part B School age or Preschool		
	616	Special Education Support Services Program	
		100	Salaries <ul style="list-style-type: none"> • Special Education Directors and Supervisors • Professional and paraprofessional related services personnel providing related services to students with disabilities • District related services personnel for conducting instruction in parenting skills and other classes for parents and families of students with disabilities • District related services personnel for conducting Special Education workshops, seminars, aide training or other district in-service meetings • On-staff interpreters for students with hearing impairment • Translators for non-English speaking students with disabilities.
		200	Benefits for Support Services Personnel above
		300	Purchased Services <ul style="list-style-type: none"> • Contracts with other districts, public and private agencies or individual service providers for related services to students with disabilities, provided that such services are specified in the students' IEPs and meet

			<ul style="list-style-type: none"> state standards Repairs to equipment used in the provision of related services.
		400	Supplies and Materials <ul style="list-style-type: none"> Screening materials for activities conducted by related services personnel to identify students with disabilities Testing/Assessment supplies Supplies and materials for related services programs directly involved with implementing IEPs Computer software Record-keeping materials for Special Education programs Technology for administrative case management.
		500	Capital Objects <ul style="list-style-type: none"> Equipment to support provision of related services to students with disabilities Computer hardware for use by students with disabilities and related services providers Testing and assessment instruments and curricula Technology for administrative case management.
Professional Development and Instructional Improvement			
			<ul style="list-style-type: none"> Professional development for Special Education personnel Non-district personnel to adapt and develop curriculum materials Special Education personnel visits to other district or agencies or attendance at workshops and conferences, including mileage and meal costs Regular education personnel visits to Special Education programs in other districts or agencies or attendance at workshops and conferences based on direct professional responsibility for instruction of students with disabilities, including mileage and meal costs Course work for regular or Special Education personnel who participate in credit-bearing in-service or college courses related to Special Education not leading to degrees Non-district consultants / speakers for workshops, seminars, aide training or other in-service meetings related to Special Education.

The above list of allowable uses and accounting codes is not intended to be all-inclusive and complete. There are other uses for these funds as indicated on the Part B and Preschool budget forms. If you budget funds for purposes other than those listed above and in the section following, you must provide a detailed narrative of how the funds are used in compliance with the excess cost regulations or other applicable regulations.

Other uses that may be authorized under Part B include the costs of **Early Intervening Services** and the costs of activities authorized by the ESEA for LEAs that elect to use some of these funds for **Schoolwide programs**. Descriptions of how funds may be set aside and used for these purposes are found in the [Coordinated Early Intervening Services](#), [Schoolwide](#), and [Parentally-Placed Private School Students](#) sections of this manual.

Indirect costs: Only LEAs that have an approved indirect cost rate may charge indirect costs to Part B and Preschool funds and only on actual costs in accordance with SDE guidelines for applying indirect costs.

Allowability of Specific Items of Cost

The table below lists specific items of cost and addresses the allowability of each.

Symbol Key:



Always allowed


















Allowed, but special requirements or additional information required



















Never allowed






Allowed	Not Allowed	Budget Item	Special Requirements or Additional Information
		ADVERTISING: Costs associated with advertising in media such as newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals.	Allowed for IDEA-related recruitment of personnel, procurement of goods and services, and other specific purposes necessary to meet the requirements of the IDEA grant.
		ASSISTIVE TECHNOLOGY DEVICES: Used to increase, maintain or improve the functional capabilities of a child with a disability.	
		AUTOMATIC DOOR OPENERS: Purchase and installation.	Purchase and installation of automatic door openers is allowed if needed to provide access for a child with a disability.
		BUS PURCHASE, LEASE or RENTAL: Vehicle purchase or lease, insurance, repair, and maintenance. See also "Transportation Costs – Special Education".	Vehicles must be used ONLY to transport children with disabilities who require special assistance in transportation (special transportation or additional transportation), including children with disabilities attending regular classes.
		BUS DRIVER: Salaries and fringe benefits.	The salary and fringe benefits of a bus driver are allowed ONLY for the time the driver transports children with disabilities who require special assistance in transportation (special transportation or additional transportation), including children with disabilities attending regular classes.
		CHILD FIND ACTIVITIES: Costs associated with public awareness, notices, screening.	Child find activities are allowed for identification of children with disabilities.
		CLERICAL SUPPORT: Salaries and fringe benefits.	Only the actual time spent supporting special education is allowed. Clerical support must be document in accordance with Policies and Procedures as outlined in 2 CFR 200.430(i).









		COMPUTERS FOR STUDENTS	Acquisition of computers are NOT an excess cost, and therefore not allowed, if the LEA has decided to equip classrooms in a school and simply charges the IDEA grant a prorated amount based upon the number of children with disabilities in the school. The equipment is an excess cost when related to the unique needs of a child with a disability. It may be provided in a regular education class or other education-related setting, even if one or more nondisabled children benefit. When the equipment is no longer needed to meet the unique needs of a child with a disability, it must be managed or disposed of in accordance with 2 CFR 200.313 (c)-(e).
		COMPUTERS FOR STAFF	Computer equipment for special education staff is allowed if the individual works solely in special education. When the equipment is no longer needed, it must be managed or disposed of in accordance with 2 CFR 200.313 (c)-(e)
		COMMUNICATION DEVICES FOR STAFF: Costs associated with lease or purchase and charges for use of desk phones, cell phones, pagers and radios.	Communication devices are allowed ONLY for special education activities. If a device also is used for other non-special education activities, documentation is required of the extent to which it is used for special education and the other activities. Costs for personal use are not allowed.
		COMPUTER NETWORKS: Costs associated with an LEA's computer networks.	LEAs' computer networking costs are provided district-wide and are not excess costs of special education.
		CONSTRUCTION: Constructing facilities or altering existing facilities.	Costs for construction or alteration of facilities must be excess costs of special education. A project must meet the needs of one or more children with disabilities. Costs for the general purpose of bringing facilities into compliance with Section 504 and ADA requirements are not allowed. Costs must be necessary and reasonable. LEAs must have prior approval from the SDE to use IDEA funds for construction.
		CONSULTANT SERVICES: Costs associated with contracted services from a consultant.	LEAs may contract with consultants to provide information about methods, techniques, and strategies to use for children with disabilities or advice to



			staff for a particular student.
		CONTRACTED SERVICES - PARENTALLY-PLACED PRIVATE SCHOOL STUDENTS	Federal law specifically authorizes provision of services for parentally-placed private school students through contract with an individual, agency, organization, or other entity.
		CURRICULUM DEVELOPMENT: Costs associated with substitutes, release time, or extended contract.	Costs related to substitute teachers, release time, and extended contract for development of curriculum for special education students is allowed for both regular and special education staff.
		DISTRICT ADMINISTRATORS: Salaries and fringe benefits.	The salary and fringe benefits of a district administrator cannot be charged to federal grants even if the administrator is providing special education support and is appropriately licensed.
		EQUIPMENT - CAPITAL: Equipment to support special education and related services.	LEAs must receive prior approval from the SDE to use IDEA funds for capital equipment. Capital equipment is equipment with a useful life of more than one year that costs \$5,000 or more per unit.
		EQUIPMENT - NON-CAPITAL: Equipment to support special education and related services.	Special education equipment that does not meet the definition of capital equipment.
		EXTENDED SCHOOL YEAR (ESY): Personnel, supplies, equipment, transportation, and any other services identified in the student's IEP.	The need for ESY must be documented in the student's IEP.
		EVALUATIONS: Personnel, supplies, or contracted services.	
		FOREIGN LANGUAGE AND SIGN LANGUAGE INTERPRETERS FOR IEP MEETINGS: Salaries and fringe benefits or contracted costs.	LEAs may contract with a private vendor for interpreter services for IEP meetings. Expenditures related to IEP meetings are considered an excess cost of special education.
		FURNITURE: Desks, tables, chairs, file cabinets.	LEAs may purchase student or staff desks, tables, and chairs, file cabinets, and other furniture for use in spaces dedicated to special education programs, such as resource rooms. LEAs may only purchase student furniture for use in a regular education classroom if the furniture is adapted to the specific needs of a child with disability. Examples of such furniture are wheelchair accessible desks and adjustable tables or workstations. When furniture purchased with IDEA funds is no longer needed for the

			special education program or for a child with a disability, it must be managed or disposed of in accordance with 2 CFR 200.313(c)-(e).
		INDIRECT COSTS: Costs incurred to benefit more than one program or objective not readily assignable to the programs.	Only LEAs that have an indirect cost rate negotiated with the Division of Finance may charge indirect costs to IDEA grants.
		LEGAL EXPENSES: Attorney fees for IDEA state complaints, due process hearings, representation at IEP team meetings, facilitated IEP team meetings, mediation sessions, or any student-specific consultation.	
		LEGAL EXPENSES - PROFESSIONAL DEVELOPMENT / POLICY DEVELOPMENT: Contracted staff training, in-service, or policy development and review.	
		MAINTENANCE OF SPECIAL EDUCATION EQUIPMENT: Assistive technology devices; copying machines, printers, elevators, etc.	If the equipment is used for special education only, the cost of maintaining the equipment may be charged to the IDEA grant.
		MEDICAID ADMINISTRATION SERVICES: Costs for claiming Medicaid funds, including third-party administrators.	The costs for administering Medicaid services may not be charged to the IDEA grant, because they are not necessary for the performance of the IDEA grant. 2 CFR 200.403-405
		NURSE – SCHOOL-BASED: Salaries and fringe benefits for LEA employees or costs for contracted nursing services.	Costs must be IEP-driven or related to the evaluation of a child. Day-to-day costs of nursing services provided to all students are not allowed. Only the actual time providing related services required by IEPs or performing evaluations is allowed. These services must be documented in accordance with Policies and Procedures as outlined in 2 CFR 200.430(i).
		OCCUPATIONAL THERAPISTS (OT) and OT ASSISTANTS: Salaries and fringe benefits for LEA employees or costs for contracted OT services.	
		OFFICE EQUIPMENT: Equipment used by special education staff.	Allowed if the equipment is exclusively used by special education staff.
		PARAPROFESSIONALS: Salaries and fringe benefits.	Paraprofessionals must be employees of an LEA. Paraprofessionals must work under the supervision of an appropriately licensed special education teacher and perform duties consistent with the role of paraprofessional, while not assuming

			the role of a teacher.
		PHYSICAL THERAPISTS (PT) and PT ASSISTANTS: Salaries and fringe benefits for LEA employees or costs for contracted PT services.	
		PARENTALLY-PLACED PRIVATE SCHOOL STUDENTS - SPECIAL EDUCATION AND RELATED SERVICES: Equitable services.	Equitable services may be provided by employees of a school district. In addition, federal law specifically permits provision of equitable services to parentally-placed private school students through contract with an individual, agency, organization, or other entity.
		PLAYGROUND EQUIPMENT: Accessible playground equipment.	The additional costs of making a playground accessible to children with disabilities are allowed. Additional equipment or the additional cost of acquiring accessible equipment may be funded. The equipment may be used in a regular education setting, even if one or more nondisabled children benefit.
		PRINCIPALS OR ASSISTANT PRINCIPALS: Salaries and fringe benefits.	Salaries for principals and assistant principals may not be charged to the IDEA grant. If an individual is employed as a part-time principal and also as a part-time special education teacher or provider, the salary and fringe benefits for teaching special education or providing other special education services may be charged to the IDEA grant. The individual must document the work in accordance with Policies and Procedures as outlined in 2 CFR 200.430(i).
		PROFESSIONAL DEVELOPMENT: Costs associated with registration fees, travel, conference expenses, and providers.	Registration fees, travel, and conference expenses associated with special education in-service training of regular education and special education staff are allowed.
		PSYCHOLOGISTS - SCHOOL-BASED: Salaries and fringe benefits.	Costs must be IEP-driven or related to the evaluation of a child. Day-to-day costs of services provided to all students are not allowed. Only the actual time spent supporting special education is allowed. These services must be documented in accordance with Policies and Procedures as outlined in 2 CFR 200.430(i).
		PSYCHOLOGISTS - STUDENT EVALUATIONS: Contractual costs.	Allowed only for a psychologist to provide evaluation services.

		REMODELING: Costs associated with remodeling due to the unique needs of a student or students with a disability.	<p>Remodeling costs must be excess costs of special education. Remodeling must meet the needs of one or more children with disabilities. Remodeling costs for the general purpose of bringing facilities into compliance with Section 504 and ADA requirements are not allowed.</p> <p>Costs must be necessary and reasonable. LEAs must have prior approval from the SDE to use IDEA funds for remodeling.</p>
		SECRETARIAL STAFF: Salaries and fringe benefits.	Only the actual time spent supporting special education is allowed. The work of secretarial staff must be documented in accordance with Policies and Procedures as outline in 2 CFR 200.430(i).
		SOCIAL WORKERS - SCHOOL BASED: Salaries and fringe benefits.	<p>Costs must be IEP-driven or related to the evaluation of a child. Day-to-day costs of services provided to all students are not allowed. Social workers must be appropriately licensed to deliver services they are assigned.</p> <p>Only the actual time spent supporting special education is allowed. Services of Social Workers must be documented in accordance with Policies and Procedures as outlined in 2 CFR 200.430(i).</p>
		SOCIAL WORKERS – STUDENT EVALUATIONS: Contractual costs.	Allowed only for a social worker to provide evaluation services.
		STAFF DEVELOPMENT: Costs associated with registration fees, travel, conference expenses, and providers.	Registration fees, travel, and conference expenses associated with special education in-service training of regular education and special education staff are allowed. In addition, LEAs may coordinate IDEA funds with funds from other sources (e.g., Title I ESEA) in school-wide staff development activities to improve outcomes for all students. In school-wide staff development activities, IDEA funds may be used for the total cost of professional development in the same proportion as the number of special education and related service personnel receiving professional development is to the total school personnel participating.

		STUDENT EVALUATIONS: Personnel, supplies, or contracted services.	
		SUBSTITUTE TEACHERS: Salaries and fringe benefits.	Substitute teacher costs are allowed for special education teachers. Substitute teacher costs are allowed for regular education teachers performing duties such as attending special education in-service training, attending IEP team meetings, or engaging in planning meetings or consulting with special education teachers to benefit children with disabilities.
		SUPERINTENDENTS (DISTRICT ADMINISTRATORS): Salaries and fringe benefits.	The salary and fringe benefits of superintendents cannot be charged to IDEA grants, even if the superintendent is providing special education support and is appropriately licensed. 2 CFR 200.430(i).
		TEACHERS – REGULAR EDUCATION: Salaries and fringe benefits.	Regular education teachers may be paid to attend special education in-service activities and IEP meetings. Instructional costs of regular education teachers are not allowed.
		TECHNOLOGY STAFF: Salaries and fringe benefits for LEA employees or costs for contracted IT services.	LEA technology staff expenses for programming or maintaining special education and related services databases and applications are allowed and may include coordination or administration of technology services. Private contracts for special education database maintenance or programming also are allowed. These services must be documented in accordance with Policies and Procedures as outlined in 2 CFR 200.430(i).
		TRANSITION SERVICES – PRESCHOOL: Costs associated with preschool transition activities.	Services must be identified in the student's IEP. These costs may also be incurred when school is not in session.
		TRANSITION – EMPLOYMENT SKILLS: Costs associated with work experiences, job coaches, acquisition of employment skills.	LEAs may contract with agencies to facilitate the acquisition of employment skills for students with disabilities typically ages 18-21. The transition services must be identified in students' IEPs. The costs also may be incurred when school is not in session.
		TRANSPORTATION COSTS - SPECIAL EDUCATION: Costs incurred by the LEA for transporting children with disabilities.	Allowable special education transportation costs include repair or servicing of special education vehicles, insurance, mileage, and bus driver and bus aide costs.

		TUITION – TECHNICAL COLLEGE CLASSES FOR STUDENTS WITH DISABILITIES: Tuition to a local technical college for a special education program for a student with a disability.	These expenses are allowed if the program is required by the IEP and the student receives high school credit.
		VEHICLE PURCHASE, LEASE or RENTAL: Vehicle purchase or lease, insurance, repair, and maintenance.	Vehicles must be used ONLY to transport children with disabilities who require special assistance in transportation (special transportation or additional transportation), or for exclusive use of special education personnel in fulfilling program requirements as outlined on students' IEPs. Such purchases or leases must have prior written approval of the SDE.

FAQs about Allowable Costs

Q: The Superintendent in our district also serves as Special Education Director. May we pay a portion of the Superintendent's salary from Part B funds?

Q: The Principal of XYZ elementary school in our district also serves as Special Education Director. May we pay a portion of the Principal's salary from Part B funds?

A: In both cases the answer is No because neither case would pass the excess cost test nor the non-supplanting. Administrative personnel, who serve multiple functions within the district, including Special Education functions, should generally not be paid out of Part B funds.

Q: May we pay the salary of the Special Education Director?

A: As long as the Special Education Director is fully qualified for the position and is only functioning as Special Education director, the answer is yes. Anyone not fully qualified as a Special Education Director may not be paid with Part B funds.

Q: May we pay the salary of administrative personnel in the Special Education department? For example, a Special Education secretary?

A: So long as they are "reasonable and necessary" costs, including administrative personnel, exclusive to the administration of a Special Education program are allowable.

Q: May we pay a portion of the salary of a secretary whose time is divided between the Special Education program and other programs?

A: You may pay for only that portion of the person's time that can be documented as directly attributable to the Special Education program. A system that documents time and effort must be in place and available for review at any time.

Fiscal Record Retention and Programmatic Records Compliance

34 CFR 76.731 maintains that all records must be kept to show their compliance with IDEA program requirements. Therefore, the LEA is subject to the record retention requirements identified in 34 CFR 80.42 and 2 CFR 200.333 which replaces 34 CFR 80.42 effective July 1, 2015 for IDEA Part B FFY 2015 grant awards, under which records must generally be retained for three (3) years from the day the grantee or sub-grantee submits to the awarding agency its single or last expenditure report for that period.

Under 34 CFR 76.709, if LEAs do not obligate all of their IDEA Part B or Preschool grant funds by the end of the fiscal year for which Congress appropriated the funds, they may obligate those funds during a carryover period of one additional year. Therefore, the LEA must generally keep all records to show compliance with IDEA fiscal and programmatic requirements for a minimum of five (5) years.

The State Department of Education hereby recommends that the LEAs maintain five years and one audit year to comply for their record retention schedule for all federal fiscal and programmatic records, which is a total of six (6) years.

This fiscal and programmatic record retention schedule is more restrictive than the State of Idaho's record retention policy, and also the prescribed Idaho's 2007 Special Education Manual, newly revised in 2015, but coincides with the Idaho State Department of Education's accepted record retention schedule for Federal Programs.

Time and Effort Standards

All employees who are paid in full or in part with IDEA Part B funds must keep specific documents to demonstrate the amount of time they spent on grant activities. This includes an employee whose salary is paid with state or local funds and is included in the LEA's maintenance of effort calculation. These documents, known as time and effort records, are maintained in order to charge the costs of personnel compensation to federal grants.

Charges to federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

- Be supported by a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
- Be incorporated into official records;
- Reasonably reflect total activity for which the employee is compensated, not exceeding 100% of compensated activities;
- Encompass both federally assisted and all other activities compensated by the LEA on an integrated basis;
- Comply with the established accounting policies and practices of the LEA and
- Support the distribution of the employee's salary or wages among specific activities or costs objectives.

Time and Effort Procedures

Despite the lack of specific rules requiring certain signatures or certain periods of certification, the SDE recommends that an LEA makes no change to its time and effort system if it is in compliance with the previous rules requiring certifications for employees working under a single federal award or cost objective or personnel activity reports for those working under multiple cost objectives. Meeting those requirements should also ensure that the LEA meets the current requirement that records "must be supported by a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated."

The LEA must have written policies and procedures that, at a minimum, address the following: What type of documentation is maintained and what are the requirements of the documentation? For example, who has to sign the documentation? How often must the certifications be completed? Are the certifications completed on paper or electronically? Does a supervisor review the certification?

What is the timeframe for reviewing the certification?

Time and Effort Reporting

In order to determine if Personnel Costs are allowable under IDEA Part B, school districts and charter schools are required to maintain auditable "time and effort" documentation that show how each employee paid with IDEA Part B funds spent his or her compensated time. Such documents are written, after-the fact (not estimated or budgeted) reports of how the time was spent. Time and effort reports should be prepared by any staff with salary charged (1) directly to the federal award, (2) directly to multiple federal awards, or (3) directly to any combination of a federal award and other federal, state or local fund sources.

- **Semi-annual certifications are required for the following personnel:**

- Work solely in special education and compensation is funded solely from the IDEA Part B grant;
- Work solely in special education but compensation is funded from both Part B and general funds;
- Work solely in special education and that time is funded from local or state funds and is included in maintenance of effort calculations.

These certifications document that the employee has been working solely in activities supported by the IDEA Part B grant, or in special education cost objectives, during the certification period. The certification must (1) cover a semi-annual or more frequent period, (2) identify IDEA Part B as the program or special education as the cost objective, and (3) be signed and dated by the employee and supervisor having first-hand knowledge of the work performed by the employee.

- **Monthly reports are required for personnel whose time is charged in part to IDEA Part B or special education and in part to other cost objectives.** These reports document the portions of time and effort dedicated to IDEA Part B/special education and to other cost objectives. Such records must (1) be completed after-the-fact, (2) account for the total time for which the employee is compensated, (3) be prepared at least monthly, (4) coincide with one or more pay periods, and (5) be signed by the employee and countersigned by an administrator or supervisor.
- **Stipends (and other supplemental contracts) must also be reported.** Record stipends on semi-annual certifications or monthly reports, whichever is utilized for the particular employee. Alternatively, permitted documentation includes (1) a signed supplemental contract that stipulates IDEA Part B/special education work activity, (2) sign-in attendance logs approved by the supervisor (e.g., pay for professional development activities), and (3) employee time/pay slips that specify IDEA Part B/special education and are approved by the supervisor.
- **All of the above apply equally to personnel whose compensation is funded from the IDEA Preschool grant.**

Examples of the semi-annual certification and personnel activity report are listed on the next 3 pages.

Single Federal Award or Cost Objective – Sample Form

This form is required to be signed twice annually by the employee(s) paid solely from a single federal fund, (for example, Title I, Title II, IDEA Part B, etc.) or who work solely on a single cost objective and should be available for audit and monitoring reviews.

SDE Recommended Tracking states “where employees are expected to work solely on a single federal award or cost objective charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on the program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee and supervisory official having first-hand knowledge of the work performed by the employee.”

I, _____,
(Name) (Title)

certify that 100% of my time has been spent performing duties associated with

_____ *

for the period of **(July 1 through December 31)** or **(January 1 through June 30)** of the current year.
(Underline or circle the correct period)

Employee signature Date _____

Supervisor signature Date _____

**Insert the name of the federal award or cost objective. Cost objectives could include special education, IDEA Part B Maintenance of Effort, Preschool program, etc.*

Personnel Activity Report – Sample Form

Employee Name: _____

Employee SSN: (Optional) _____

Month	Year	Percentage of Time Worked by Activity					TOTAL % of Time Worked
		Work Activity #1	Work Activity #2	Work Activity #3	Work Activity #4	Work Activity #5	

The signature(s) below certifies this employee performed activities reflected in the attached log as distributed in the above percentages during the month specified.

Signature of Employee

Date

Position Title

Job Location / School Name

Signature of Supervisor (Optional)

Date

This certification is in support of the Time Reporting requirements consistent with SDE Recommended Tracking: “Where employees work on multiple activities or cost objectives, a distribution of wages will be supported by personnel activity report...”

Personnel Activity Report - Directions

Purpose of the PAR Form:

The PAR form is used to document the Time Reporting requirements of OMB Circular A-87. Employees who work on multiple activities funded from different sources have personnel activity records that support the distribution of their salaries / wages. A log must be attached to each monthly PAR documenting the time reported. The same time log should be used to document all of the employee's work activities.

Directions for Completion:

*The Personnel Activity Report (PAR) must be completed **monthly**.*

- Employee Name
 - Enter full name of employee.
- Employee SSN
 - Enter Social Security or Identifying Number.
 - *Strictly optional.*
- Month, Year
 - Must be completed each month after-the-fact.
- Work Activity #1-5
 - List any program from which employee's salary is funded (General Purpose, IDEA Part B, Title I, etc.).
 - Give percentage of time employee worked in each program.
- TOTAL % of Time Worked
 - Add each percentage of time across columns to determine the total percentage of time worked.
 - This must agree with employee personnel and budget records.
- Signature of Employee
 - Employee must sign the PAR each month.
- Date
 - Enter Date the PAR was completed and signed by employee.
- Position Title
 - Enter title of employee (SE Supervisor, Teacher, Educational Assistant, Nurse, etc.).
- Job Location / School Name
 - Enter location where employee is assigned to work (name of school, central office, etc.).
- Signature of Supervisor, Date
 - *Signature of Supervisor and Date are optional and may be deleted.*
- Attach supporting time log to PAR form.

Using IDEA Part B or Preschool Funds for Acquisition of Equipment and Construction or Alteration of Facilities

IDEA allows the use of Part B and Preschool funds for the acquisition of equipment and for construction or alteration of facilities under certain conditions defined in the Part B regulations.

300.718 Acquisition of equipment and construction or alteration of facilities:

- (a) General. If the Secretary determines that a program authorized under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.
- (b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of -
 - (1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Standards for Buildings and Facilities”); or
 - (2) Appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).

Equipment is defined in federal regulations at 34 CFR §74.2:

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Idaho School Districts or LEAs intending to use IDEA Part B funds for the purchase of equipment, as defined above, or for remodeling or construction of facilities, must:

- Budget the total cost of the equipment or remodeling/construction project on the current year flow-through budget form, clearly indicating the function/program code and expenditure or asset sub-object code to which these costs will be charged.
- Submit a letter, signed by the district superintendent or charter school administrator and addressed to the Director of Special Education, Idaho State Department of Education, requesting pre-approval for the equipment purchase or remodeling/construction cost. The letter must include the following:
 - For equipment purchases:
Detail of the items to be purchased, including base cost per unit and any additional costs (such as delivery, installation, etc.), name of vendor, and assurance that all applicable state and/or district/LEA procurement policies and procedures have been adhered to in the purchase of this item. The letter should include a detailed description of the manner in which the item of equipment will be used in providing services to children with disabilities and how its use will improve the special education program of the district or LEA.
 - For remodeling/construction projects:
A detailed description of the construction/remodeling project that includes description of work to be done, individual items of cost, and total estimated cost of the project (*an example of project descriptions is included following this summary*). The letter should include estimated timelines for completion of the project, the names of contractors and vendors to be used, and assurances that all applicable state and/or district/LEA contracting and procurement policies and procedures have been adhered to in the purchase of this item. The letter should include a detailed description indicating how the new or remodeled facility will be used in providing services to children with disabilities and how its use will improve the special education program of the district or LEA.

The State Director of Special Education will respond to these requests within 10 days, either approving or disapproving the equipment purchase or remodeling/construction project. Please note, however, that equipment purchased or remodeling/construction begun prior to approval by the SDE may result in an audit exception, and the LEA may be required to repay the funds used.

Remodeling Project Description and Estimate - Example

XYZ School District

PROJECT #1: PRESCHOOL CENTER

ITEM	ESTIMATE
Add a bathroom to an existing classroom	\$10,000
Remodel existing bathrooms	5,000
Sinks / Drinking fountains in classrooms	4,000
Remodel middle area for office space / therapy areas	1,000
Carpeting / Painting	7,500
Shelving / Cupboards / etc. as needed for materials and supplies	6,500
Remodel kitchen area to accommodate Creative Curriculum	4,000
Supplies / Furniture as needed to supplement existing furnishings	3,500
TOTAL	\$41,500

PROJECT #2 EXTENDED RESOURCE ROOM

We will be combining two classrooms to make one large room for our extended resources students and remodeling to access restrooms from the classroom.

ITEM	ESTIMATE
Tear out wall, cupboards, sinks, etc. between the two rooms	\$5,000
Remodel bathrooms to meet ADA requirements for access	7,500
Install automatic doors to bathrooms	10,000
Remodeling plumbing as needed in classroom and bathroom	3,000
Install new thicker padding / carpet	8,000
Shelving / Cupboards / etc. as needed for materials and supplies	3,000
Supplies / Furniture as needed to supplement existing furnishings	2,500
TOTAL	\$39,000

PROJECT #3 RESOURCE CLASSROOM

We will be moving the resource classroom into the current preschool classroom to give them additional space for small group instruction.

ITEM	ESTIMATE
Remodel restroom for older children (new linoleum, toilets, sink, etc.)	\$5,000
Add shelving and storage	2,000
Supplies / furniture as needed to supplement existing furnishings	3,000
TOTAL	\$10,000

GRAND TOTAL	\$90,500
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Inventory Management Systems

LEAs and charter school sub-recipients of IDEA Part B funds that use those funds to purchase equipment or property must maintain an adequate inventory management that complies with 2 CFR 200.313 (c)-(e).

Property records in the inventory management system should include, at a minimum:

- 1) Property description;
- 2) Identification number;
- 3) Source of funding;
- 4) Acquisition date and cost;
- 5) the location, use* and condition of the property; and
- 6) any ultimate disposition data including the date of disposal and sale price of the property.

In addition to the above information, the inventory management system should ensure that all source documents in support of the above information are maintained throughout the life and disposition of the equipment, and property records should be updated frequently so that grantees and subgrantees can account for every piece of equipment purchased with federal funds at any given time.

* Equipment or property purchased exclusively with IDEA Part B funds must be used exclusively for the benefit of the Special Education Program.

Inventory Controls

- Adequate safeguards to prevent loss, damage, or theft
- Physical inventory of property at least every two years
- Adequate maintenance of equipment

Disposition of Equipment

2 CFR 200.313(e) establishes rules for disposing of equipment:

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

- (1) Items of equipment with a current per-unit fair market value of less than \$5,000.00 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
- (2) Items of equipment with a current per unit fair market value in excess of \$5,000.00 may be retained or sold, and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.
- (3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition action.

Coordinated Early Intervening Services (CEIS)

FAQ

1. What is Coordinated Early Intervening Services (CEIS)?

Under the 2004 IDEA amendments and the 2006 IDEA regulations, local education agencies (LEAs) are permitted to use up to 15% of their IDEA Part B and Preschool (Section 611 and Section 619 combined) to “develop and implement coordinated, early intervening services, which may include interagency funding structures, for students in grades kindergarten through grade twelve (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.” 34 C.F.R. § 300.226.

A LEA is required to use the maximum amount (15%) of their Part B allocations (Section 611 and Section 619 combined) for CEIS if significant disproportionality is determined through the collection and analysis of student race and ethnicity data in the following areas:

1. The identification of children as children with disabilities
2. The identification of children as children with disabilities in accordance with a particular impairment
3. The placement in particular educational settings of these children
4. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. 34 CFR § 300.646.

2. How does a district allocate Part B funds for CEIS?

CEIS funds can be set aside in the IDEA Part B and Preschool Application due by October 15th each year. ***The CEIS Budget and Assurance form that includes the CEIS plan must be submitted and approved prior to expending Part B funds for CEIS activities. The CEIS plan must contain the following information:***

- Identify scientifically research-based strategies/interventions that will be used
- Identify targeted grades and schools
- Document how students will be identified for CEIS
- Estimate anticipated number of students to be served
- Describe progress monitoring process to be used to monitor student progress.

3. What are the reporting requirements regarding the use of CEIS funds?

Each LEA must annually report to SDE in the LEA Application the number of students who receive CEIS supported by IDEA Part B funding and the number of students who received CEIS “and subsequently receive special education and related services during the preceding two year period.” 34 CFR §300.226.

4. What are the fiscal accountability requirements regarding CEIS?

As part of the CEIS plan, LEAs must also submit a budget for anticipated CEIS expenditures. These funds must be accounted for separate from other Part B funds. At the end of the year in which the CEIS funds were budgeted, the LEA must report, in the IDEA Part B Application, the actual expenditures of CEIS funds, as of September 30th. Any unspent CEIS funds will carry over to the second year of availability. However, if the LEA intends continue using IDEA funds for CEIS, it must submit a new budget and plan for use of those funds in the current year.

5. How can CEIS funds be used?

According to the 2004 IDEA amendments and the 2006 IDEA regulations, the following activities are possible CEIS activities:

- “Professional development (which may be provided by entities other than the LEA) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software.”
- “Providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.” According to OSEP, other activities not listed may be permissible, so long as those activities are directed to providing assistance to students who need additional academic and behavioral support in the general education environment.”

6. What are examples of activities CEIS funds would support?

- Professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral tier 2 interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software to struggling students primarily, but not exclusively, of the over-identified race/ethnicity who are **NOT** on an IEP.
- Services for struggling students not currently identified as needing special education or related services but who need additional academic and/or behavioral supports to succeed in the general education environment.
- Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction to struggling students primarily, but not exclusively, of the over-identified race/ethnicity who are **NOT** on an IEP.
- Provide RTI tier 2 or tier 3 interventions to struggling students primarily, but not exclusively, of the over-identified race/ethnicity who are **NOT** on an IEP.
- Provide behavioral interventions to nondisabled students primarily, but not exclusively, of the over-identified race/ethnicity who receive a certain number of disciplinary office referrals, perhaps as a part of a Positive Behavioral Interventions and Support initiative (PBS).
- Provide RTI tier 2 or tier 3 interventions to struggling students primarily, but not exclusively, of the over-identified race/ethnicity who are **NOT** on an IEP.
- Add a reading or math coach to work with teachers of at-risk students primarily, but not exclusively, in the over-identified population to ensure that instruction is delivered with fidelity.
- Fund reading or math specialists to work primarily with nondisabled students in the over-identified population who have not reached grade-level proficiency in those subjects.
- Fund after-school tutoring primarily nondisabled students primarily of the over-identified race/ethnicity who score below “basic” on statewide assessments.
- Fund supplemental new or additional activities related to school improvement efforts such as Title I or Title III.

7. What are examples of activities CEIS funds would not support?

Activities directed to students with an IEP may not be supported with CEIS funds. However, CEIS could be provided to

children who once received special education but who have been exited from the program. Progress monitoring associated with the implementation and ongoing delivery of services described in a student's IEP may not be supported with CEIS funds, nor may any professional development (whether directed to general education teachers or special education teachers) about teaching students with disabilities and implementing IEPs.

It is also inappropriate to use CEIS funds to fund programs for English language learners who do not need additional academic and behavioral supports to succeed in the general education environment; however, nothing in the 2004 amendments or the 2006 regulations would prohibit an LEA from using CEIS funds to provide CEIS to English language learners who are also at risk and "need additional academic and behavioral support to succeed in a general education environment." CEIS and ESEA funds for English language learners are subject to the "supplement not supplant" requirement.

CEIS funds must supplement, not supplant. Universal screening that is conducted for all students generally cannot be funded with Title I, Title III, or CEIS funds. However, progress monitoring that is targeted to evaluate the effectiveness of a specific intervention may be funded by Title I, Title III or CEIS funds.

CEIS funds must NOT be used for the following:

- To replace Title 1 or RTI services that are already occurring
- For services to preschool students
- For Tier 1 instruction or materials.

Title I Schoolwide Consolidation of IDEA Part B Funds

IDEA Part B funds may be consolidated with other funds to carry out an approved Schoolwide Program under Title I of the ESEA. If an LEA decides to consolidate IDEA funds with Title I Schoolwide funds, the LEA will submit a budget and assurance with the IDEA Part B and Preschool Application.

The maximum amount of IDEA Part B funds that may be used in Schoolwide is proportionate the number of children with disabilities within the schoolwide schools where the funds will be used. The Part B Application includes a calculator for determining the maximum amount allowable for this set-aside.

34 CFR 300.206 Schoolwide programs under Title I of the ESEA:

- (a) General. Notwithstanding the provisions of 300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed:
 - (1)(i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by
 - (ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by
 - (2) The number of children with disabilities participating in the schoolwide program.
- (b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:
 - (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by 300.202(a)(2) and (a)(3).
 - (2) The funds may be used without regard to the requirements of 300.202(a)(1).
- (c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools:
 - (1) Receive services in accordance with a properly developed IEP; and
 - (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

Parentally-Placed Private School Children

Proportionate Share of IDEA Part B and Preschool Funds for Parentally-Placed Private School Children with Disabilities

IDEA requires that the SDE have in place policies and procedures that ensure that school districts locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools that meet the definition of elementary school or secondary school and that a proportionate share of IDEA Part B and Preschool funds is determined and set aside for the purpose of providing services to those private school children. (See the [Special Education Manual Chapter 9 Section 1](#) for an overview of policies and procedures regarding Parentally-Placed Private School Children.)

34 CFR §300.13 Elementary school

Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law

34 CFR §300.36 Secondary school

Secondary school means a nonprofit institutional day or residential school, **including a public secondary charter school** that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12

The regulations concerning parentally-placed private school children with disabilities, including the child find process, proportionate share calculation and reporting requirements are found at [34 CFR §§300.130 through 300.148](#).

[Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private Schools](#)

Parentally-Placed Private School Children

FAQ

1. How is the proportionate share for parentally-placed private school children calculated?

34 CFR §300.133 Expenditures.

(a) Formula. To meet the requirement of 300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in 300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2)

of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

The calculation of the proportionate share for the current year is based on the Annual count of the number of parentally-placed private school children with disabilities that was conducted in the previous year and reported in the IDEA Part B and Preschool application for the current year.

Example:

- Count of 3-21 year old PPPSC in district XYZ in 2010-11 – 10
- Child count of publicly enrolled children with disabilities in district XYZ in 2010-11 – 90
- Total number of eligible children in district XYZ in 2010-11 – 100
- % of PPPSC eligible children in 2010-11 – 10%
- District XYZ's 2011-12 Allocation of IDEA Part B funds - \$120,000
- 10% of \$120,000 = proportionate share for PPPSC = \$12,000

The same proportionate share for 3-5 year old PPPSC is applied to the Preschool allocation.

2. What records and reports regarding PPPSC child-find must the LEA keep and provide to the SDE?

Each year, in the annual IDEA Part B and Preschool Application, each district with private schools within its jurisdiction must report the following:

- Information regarding each private school that has been contacted for the purpose of initiating the consultation process described in 34CFR §300.134.
- The number of children evaluated after timely and meaningful consultation and the completion of the child-find process in the previous year.
- The number of children determined to be eligible for special education and/or related services.
- The number of eligible children actually served during the preceding year.

3. What happens if all of the funds set-aside for PPPSC in one year are not expended by the end of the first year of the grant?

In the example above, \$12,000 will be budgeted for services to PPPSC on the School Age Budget in the 2011-12 IDEA Part B and Preschool Application. When District XYZ submits the 2012-13 Application, it will report actual expenditures for services to PPPSC as of September 30, 2012. Any amount that remains unspent must be carried over into the second year of the grant cycle for the purpose of providing services to PPPSC. (34CFR § 300.133(a)(3)).

4. Can the costs of the required PPPSC child-find activities be taken out of the proportionate share amount?

No.

34CFR §300.131 (d) Cost.

The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under 300.133.

Maintenance of Effort

What is Maintenance of Effort under IDEA Part B?

IDEA Part B regulations at 34 CFR §300.203 state that, with only a few exceptions, Part B funds that are allocated to districts and LEAs each year cannot be used to reduce the level of expenditures from state funds (general fund M&O expenditures) for special education made by the district or charter school below the level in the previous fiscal year.

What Standards Apply to LEAs Regarding MOE?

The MOE regulations at 34 CFR §300.203 read as follows:

- (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
 - (i) Local funds only.
 - (ii) The combination of State and local funds.
- (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.
- (3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

What this means is that in order to be eligible for IDEA Part B funding in a particular fiscal year, an LEA must submit a budget to the SDE, as part of the annual IDEA Part B and Preschool Application, that indicates that it has budgeted for that year at least the same total or per pupil amount from either

Local funds only¹

OR

State and Local funds in combination (Idaho's General M&O Fund 100)

¹ In general, the SDE has determined that LEAs do not report *local funds only* for the purposes of meeting IDEA MOE. Indeed, accounting systems do not generally have the capacity to separate and track separately those *local funds only* that are used specifically for special education. However, OSEP at the U.S. Department of Education has issued very explicit guidance that indicates the method of reporting MOE and meeting MOE eligibility requirements must be left to the discretion of the LEA. Therefore, if an LEA elects to report local funds only for the purposes of MOE eligibility and compliance, the following will be required by the SDE:

- Audited financial statements, including a signed statement by the LEA's, auditors, that indicate the following:
 - The sources of the *local funds only*
 - The manner in which these local funds are accounted for within the LEAs financial systems
 - An audited financial statement of the previous fiscal year (or most recent for which this data is available) that indicates comparable audited comparisons.
- An indication of whether the MOE calculation is based on total local dollars or per capita amount.

In addition to the 4 standards for calculating MOE, it is important to pay careful attention to 34 CFR §300.203 (b)(3.). This section, combined with 34 CFR §300.154 makes it clear that the LEA's calculation of MOE should only include the net amount of Medicaid reimbursable expenditures less Medicaid reimbursement for those expenditures.²

What Does the SDE Look at in Testing Maintenance of Effort?

The SDE looks at three IFARMS Program codes within the General M&O Fund 100 to determine if an LEA is meeting its IDEA Part B Maintenance of Effort requirements from year to year. These Program Codes are:

Fund	Program Code	Program Description
100	521	Special Education Program
100	522	Special Education Preschool Program
100	616	Special Education Support Services Program

In general, all General M&O expenditures for special education should be accounted for within the object codes (expenditure accounts) of these three programs. Conversely, only those expenditures that can be directly considered the excess costs of providing special education and related services to children with disabilities should be coded to these programs. Districts should not make accounting adjustments for the purposes of meeting MOE or reducing the MOE level after MOE has been met.

The SDE is working on developing a post-annual report worksheet for use by LEAs whose total expenditures have decreased in these three programs, and that may be able to determine that there were legitimate special education expenditures that were coded to other programs. An example of this might be expenses for special transportation services, required by a student's IEP that were coded to one of the Transportation Program codes.

It is absolutely critical that school district and LEA fiscal personnel pay careful attention to the accounting for these costs throughout the course of the fiscal year and, along with auditors, to the information that is reported on the IFARMS Annual Financial Report and the audited financial statements that are submitted to the Division of School Finance.

For districts that have non-LEA charter schools within the district, please note that the MOE calculation will include the sum of all special education general fund expenditures of those charter schools.

Maintenance of Effort Exceptions

The exceptions to Maintenance of Effort (acceptable reasons for reducing MOE) are listed in 34 CFR §300.204 and §300.205.

² Over the past year it has become increasingly clear that many school districts and charter schools do not account for Medicaid reimbursements in such a way as to be compliant with IDEA Part B requirements that prohibit the inclusion in Maintenance of Effort determinations of expenditures that are subsequently reimbursed from Medicaid funds.

The following is an extract from a January 2008 letter signed by Patricia Guard, Acting Director of OSEP, with the corresponding regulation:

Q: Are Medicaid funds that a district receives in the form of reimbursement considered to be Federal or local funds?

A: Under 34 CFR §300.154(g)(2), reimbursements from Federal funds, including Medicaid, will not be considered "State and local" funds for the purposes of maintenance of effort.

34 C FR§300.154

(g) Proceeds from public benefits or insurance or private insurance.

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in 300.163 and 300.203.

34 CFR §300.204 lists the following allowable exceptions:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child –
 - (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

The above exceptions have been available to LEAs since reauthorization of IDEA and have been used extensively by districts and charters to justify reductions in general fund budgets and expenditures for special education.

There are several important points to keep in mind about the above list of allowable exceptions:

- 1) The important words here are “voluntary departure” or “departure for just cause.” The departure of personnel can in no respect be associated with a reduction in force due to budgetary considerations. However, unlike the exception in the 1997 law, these personnel do not have to be replaced by someone at a lower rate of pay. “Just cause” is used in the labor arbitration sense (*bare sagen*) and means that, in the case of the dismissal of personnel for misconduct, all appropriate policies and procedures have been followed by the LEA. Districts that claim this exception to MOE will be required to provide detailed information concerning the departing personnel.
- 2) The total dollar amount of expenditures from the general fund may be reduced if the numbers of students with disabilities that the LEA is serving (child count) decreases. The amount cannot be reduced lower than the average per-pupil expenditure amount of the previous year.
- 3) This exception is evaluated based on costs associated with individual students. For example, if a student who previously required a one-to-one aide moves away from the district, and that aide was paid from the general fund, the district could reduce its MOE by the amount saved. Districts that claim this exception to MOE will be required to provide detailed documentation of the cost savings and reasons these services are no longer required.

Maintenance of Effort Adjustments

Whenever there is an increase in the amount of IDEA Part B funding that is allocated to school districts and LEAs, those LEAs may be able to take advantage of the option for MOE reduction provided in §300.205 of the regulations.

300.205 Adjustment to local fiscal efforts in certain fiscal years:

- (a) Amounts in excess. Notwithstanding 300.202(a)(2) and (b) and 300.203(a), and except as provided in paragraph (d) of this section and 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by 300.203(a) by not more than 50 percent of the amount of that excess.
- (b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

- (c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) Special rule. The amount of funds expended by an LEA for early intervening services under 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

This regulation says that anytime a LEA's allocation of Part B funds increases over the previous year's allocation, that LEA can reduce its general fund special education expenditures by an amount equal to 50% of the increase. Unlike the exceptions to MOE outlined in §300.204 where the reduction results in a change in level or amount of service, this adjustment results in a shifting of costs from state and local general fund revenues to federal IDEA Part B funds.

Here is an example of how this works:

- District A received an allocation of \$1,000,000 in Part B funds in 2008-2009.
- In 2009-2010 District A received an allocation of \$1,100,000 for an increase of \$100,000.
- 50% of \$100,000 is \$50,000 – the amount by which District A can reduce its 2009-10 general fund expenditures for special education.

What this means for District A:

Let's say that in 2008-2009 District A's General Fund special education expenditures looked like this:

Fund 100		
521	Special Education Program	\$ 1,500,000.00
522	Special Education Preschool Program	\$ 700,000.00
616	Special Education Support Services Program	\$ 800,000.00
	Total M & O	\$ 3,000,000.00
	Child Count 12/1/08	750
	Per Pupil Average	\$ 4,000.00

The district is able, under §300.205, to reduce the amount above by \$50,000, or down to \$2,950,000 total expenditures.

How does a LEA reduce MOE under §300.205?

Since IDEA Part B funds can only be used to pay for the *excess costs of providing special education and related services to children with disabilities* (374 CFR §300.202), how an LEA accomplishes this reduction and accounts for it is critical. In the example above, District A paid, in 2008-2009, primarily for special education teachers and aides out of fund 100 – 521, at an average cost of \$50,000. To reduce MOE by the \$50,000 of the allowable adjustment, the district could, in 2009-10, shift the cost of 1 teacher/aide from the general fund to Part B and still maintain the same level of special education services.

Note that 300.205 (b) states that an LEA that takes advantage of this provision must “*use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.*” This section of the regulation makes the assumption that by shifting costs from the general fund to Part B funds, there will be freed-up funds available to the LEA. Districts and LEAs that have reduced MOE under §300.205 will be required to track how an amount equal to the reduction is expended in accordance with this regulation and may be required to report that information to the SDE

What Happens if LEA Fails the Maintenance of Effort TEST?

Since these funds come to the State of Idaho through the IDEA Part B Grants to States program, the SDE is ultimately responsible for administering all aspects of the program, including compliance by LEAs with the Maintenance of Effort requirements. It is very important to note that because the details of LEA MOE are spelled out in the IDEA statute, there can be no other exceptions, allowances or waivers. The exceptions and possible adjustments found in §§ 300.204 and 300.205 are all that are allowable.

The SDE evaluates LEA MOE in a multi-step process:

- The LEA submits the annual IDEA Part B and Preschool application and completes the Maintenance of Effort Assurance form.
- The MOE Assurance compares 2 years of actual general fund, special education expenditures and the current year budgeted expenditures. The actual expenditures from two fiscal years past are on file from the LEA's IFARMS Annual Report. The actual expenditures from the most recent fiscal year are reported as an assurance until the Annual Report data are compiled by the Division of School Finance. Likewise, the Budgeted Expenditures for the current fiscal year are provided as an assurance that the LEA intends to comply with MOE regulations.
- If the MOE Assurance form indicates that there has been no reduction in actual expenditures or budgeted expenditures, either in total or on a per-pupil basis, the application is conditionally approved. The final comparison of actual expenditures occurs when Annual Report data are received from the LEA, compiled and evaluated.
- LEAs whose MOE Assurance form indicates a reduction in actual or budgeted expenditures have an opportunity to complete an Allowances for Exceptions form on which they can list any of the exceptions under §300.204, or adjustments to fiscal effort under §300.205, that apply to their situation.
- If an LEA's MOE assurance indicates a reduction in actual expenditures without any allowable exception, the SDE will make every effort to immediately review the Annual Report and district audit to determine if there are discrepancies with the MOE Assurance. The LEA will be notified of the findings and given the opportunity to respond with allowable exceptions. If there are no allowable exceptions to explain the reduction, the LEA will have the opportunity to submit information from its auditor explaining possible errors in reporting on the annual report.
 - This information must come in the form of a letter signed by both the auditor and the district superintendent (LEA administrator) or business manager.
 - The letter must include the exact amount of any adjustments, the nature of the adjustments and the accounts (from/to) involved.
 - The letter must explain why the miscoding took place.
 - The letter must show steps have been taken to ensure that all special education expenditures are correctly accounted for in the future.
- If, after these efforts to resolve an MOE failure, it is determined that there has been an unallowable reduction, the LEA will be required to repay to the SDE the amount of the reduction. This repayment cannot be made from IDEA Part B funds or from any funds with federal accountability. See [OSEP MOE Policy Letter #1](#).
- The LEA's MOE level for the year following the MOE failure will remain at the higher level prior to the MOE reduction.

What Happens if LEA Does Not Demonstrate MOE Eligibility under 34 CFR §300.203?

- If an LEA's MOE assurance indicates a reduction in budgeted expenditures, either in total or per-pupil, without any allowable exception or adjustment to fiscal effort being claimed, the SDE will not approve the LEA's Part B application according to 34 CFR §300.203 (b)(1-2.). In addition, if the MOE assurance indicates that the per-pupil MOE calculation is based on an **unverified and significant reduction** in the number of children with disabilities to be served during the fiscal year for which the budget is submitted, the application will not be approved, pending the submission of further documentation and supporting information required by the SDE.

Upon receipt of notice that the application has not been approved, the LEA will have the opportunity to provide, **in writing within 30 days of receipt of the notice of non-approval**, additional information, as required by the SDE, for the purpose of indicating that the LEA intends to meet the IDEA Part B MOE eligibility requirements. These may include, but are not necessarily limited to:

- The minutes of the meeting at which the board of trustees of the LEA adopts a revised general fund special education budget that meets MOE requirements of 34 CFR §300.203, either in total or per-pupil
 - Supporting information and documentation regarding significant reductions in the numbers of children with disabilities served by the LEA
 - Additional information regarding possible allowable exceptions that apply under 34 CFR §300.204.
- If the necessary information to resolve any of the above MOE issues cannot be provided by the LEA, then the SDE will provide reasonable notice and an opportunity for a hearing to the LEA:
 - Section 613(c) of the IDEA says that if the state educational agency (SEA) determines that a local educational agency...is not eligible under this section, then the State educational agency shall notify the local educational agency...of that determination and shall provide such local educational agency...with reasonable notice and an opportunity for a hearing.
 - The IDEA regulations further state:
 - 300.155 Hearings relating to LEA eligibility.
 - The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).
 - OSEP's LEA MOE guidance has indicated that the language in 34 CFR §300.203(b)(1) is interpreted to mean that a LEA could develop a special education budget for a fiscal year prior to "closing the books" (OSEP's terminology, not in the regulations) that could be compared, for eligibility determination, to the actual expenditures of 2 fiscal years prior.

For example, a LEA's special education budget for FY 2011 could be compared to the actual expenditure data of FY 2009 if data was not available for FY at the time of the submission of MOE eligibility information. This would only be the case if the LEA's audit for the immediately preceding fiscal year had not been completed as of the due date of the annual *IDEA Part B and Preschool Application*. Further, if the LEA relies on actual expenditure data from 2 years prior, the LEA could only use the most recent verifiable child count data for the purpose of calculating per-pupil budget amounts.

IDEA Part B Regulations

34 CFR 300.16 Excess Costs

Excess costs means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

- (a) Amounts received -
 - (1) Under Part B of the Act;
 - (2) Under Part A of title I of the ESEA; and
 - (3) Under Parts A and B of title III of the ESEA and;
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how excess costs must be calculated.)
(Authority: 20 U.S.C. 1401(8))

34 CFR 300.202 Use of Amounts

- (a) General. Amounts provided to the LEA under Part B of the Act--
 - (1) Must be expended in accordance with the applicable provisions of this part;
 - (2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
 - (3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.
- (b) Excess cost requirement.
 - (1) General.
 - (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
 - (ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the non-supplanting and other requirements of this part in providing the education and services for these children.
 - (2)
 - (i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.
 - (ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.
 - (3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.
(Approved by the Office of Management and Budget under control number 1820-0600)
(Authority: 20 U.S.C. 1413(a)(2)(A))

34 CFR 300.203 Maintenance of Effort

- (a) General. Except as provided in 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
- (b) Standard.
 - (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita

amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

- (i) Local funds only.
 - (ii) The combination of State and local funds.
- (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.
- (3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section.

34 CFR 300.204 Exception to Maintenance of Effort

Notwithstanding the restriction in 300.203(a), an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child -
 - (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the SEA under 300.704(c).

34 CFR 300.205 Adjustment to Local Fiscal Efforts in Certain Fiscal Years

- (a) Amounts in excess. Notwithstanding 300.202(a)(2) and (b) and 300.203(a), and except as provided in paragraph (d) of this section and 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by 300.203(a) by not more than 50 percent of the amount of that excess.
- (b) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.
- (c) State prohibition. Notwithstanding paragraph (a) of this section, if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.
- (d) Special rule. The amount of funds expended by an LEA for early intervening services under 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

OSEP July 1, 2015 Non-Regulatory Guidance



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Date: July 27, 2015

Contact Person: Gregg Corr

Telephone: 202-245-7309

OSEP MEMO 15-10

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Melody Musgrove, Ed.D. Director
Office of Special Education Programs (OSEP)

SUBJECT: Issuance of Guidance on the Final Local Educational Agency (LEA) Maintenance of Effort (MOE) Regulations under Part B of the Individuals with Disabilities Education Act (IDEA)

The purpose of this Memorandum is to provide a question and answer (Q&A) document on the final LEA MOE regulations that were published in the Federal Register on April 28, 2015.¹ These regulations became effective on July 1, 2015. OSEP encourages State educational agencies (SEAs) and LEAs to review carefully the final regulations and the attached guidance and work collaboratively to ensure that the regulations are implemented correctly. The major changes in the final regulations include: (1) Clarification of the eligibility standard; (2) Clarification of the compliance standard; (3) Explanation of the Subsequent Years rule; and (4) Specification of the consequences for an LEA's failure to maintain effort.

The attached Q&A document explains the above terms, describes the actions that SEAs and LEAs must take to meet the MOE compliance standard and the eligibility standard, answers frequently asked questions about LEA MOE, and shares examples to facilitate and enhance SEAs' and LEAs' understanding of LEA MOE.

OSEP intends to issue a second Q&A document on LEA MOE to address issues that were not affected by the change to the regulations. The topics to be addressed will include the allowable exceptions and adjustment to the LEA MOE requirement, and the interaction between the LEA MOE adjustment and the voluntary use of funds for coordinated early intervening services.

This Memorandum and the attached questions and answers are available at <https://osep.grads360.org/#program> and <http://www2.ed.gov/about/offices/list/osep/policy.html>.

We hope that you find this information helpful. If you or members of your staff have questions, please contact Gregg Corr or your State Contact in OSEP's Monitoring and State Improvement Planning Division.

Thank you for your continued commitment to improving results for children and youth with disabilities and to ensuring that the rights of children and their parents are protected.

Attachment



IDEA PART B SUPPLEMENTAL REGULATIONS LOCAL EDUCATIONAL AGENCY (LEA) MAINTENANCE OF EFFORT (MOE)

**ISSUED APRIL 28, 2015
AND EFFECTIVE JULY 1, 2015**

NON-REGULATORY GUIDANCE

July 2015

Office of Special Education Programs
Office of Special Education and Rehabilitative Services
U.S. Department of Education

INTRODUCTION

The Office of Special Education and Rehabilitative Services (OSERS) issues this document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding the LEA maintenance of effort (MOE) requirement in Part B of the IDEA.¹

The LEA MOE requirement was first added to the IDEA in the 1997 amendments and the 1999 implementing regulations. The purpose of the requirement is to ensure that LEAs provide the financial support necessary to make a free appropriate public education (FAPE) available to eligible children with disabilities. The Department identified a need for revisions to the LEA MOE requirement based upon fiscal monitoring, audits and questions from States and others.

On April 28, 2015, the U.S. Department of Education (Department) published final regulations on LEA MOE.²

These regulations were effective on July 1, 2015. The Subsequent Years rule for Fiscal Years³ (FYs) 2014 and 2015, stated in final § 300.203(c)(1), reiterates the relevant provisions of the 2014 Appropriations Act and the 2015 Appropriations Act, respectively. As explained in the Effective Date section of the Analysis of Comments and Changes in the final rule, the 2014 and 2015 Appropriations Acts made the Subsequent Years rule applicable for Individuals with Disabilities Education Act (IDEA) Part B grants awarded on July 1, 2014, and July 1, 2015, respectively.

To provide additional clarity and act as a supplement to the revised regulations, we are issuing a two-part document in a question-and-answer format to provide guidance to the field in this complex area. Part I, as appears below, addresses the major changes in the revised regulations.

The major changes in the revised regulations include:

- Clarification of the eligibility standard;
- Clarification of the compliance standard;
- Explanation of the Subsequent Years rule; and
- Specification of the consequences for an LEA's failure to maintain effort. Each of

these areas is discussed in more detail in this document.

Part II, to be released separately, will address related issues not addressed in changes to the regulations. These issues include the allowable exceptions, adjustment, and the interaction between the LEA MOE adjustment and the voluntary use of funds for Coordinated Early Intervening Services.

This guidance does not impose any requirements beyond those required under applicable law and regulations. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. This document is not intended to be a replacement for careful study of the IDEA and its implementing regulations.

If you are interested in commenting on this guidance, please e-mail your comments to OSERSguidancecomments@ed.gov and include LEA MOE in the subject of your e-mail or write us at the following address:

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¹ The Department published final regulations for IDEA Part B in the Federal Register on August 14, 2006, and they became effective on October 13, 2006. Supplemental IDEA Part B regulations were published on December 1, 2008, and on February 13, 2013, and became effective on December 31, 2008, and March 18, 2013, respectively.

² 80 Fed. Reg. 23644 (Apr. 28, 2015).

³ The LEA MOE requirement in section 613(a) of the IDEA does not clearly specify the time period delineated by the term “fiscal year.” As such, LEAs may meet the LEA MOE requirement using their own State fiscal years (SFYs), which often cover a different range of time than do Federal fiscal years (FFYs). For clarity, references to a particular year in this document refer to the fiscal year covering that school year, unless otherwise noted.

A. GENERAL RULE

Authority: §300.203⁴

Question A-1: What is LEA MOE?

Answer: Generally, an LEA may not reduce the amount of local, or State and local, funds that it spends for the education of children with disabilities below the amount it spent for the preceding fiscal year.⁵ There are two components to the LEA MOE requirement – the eligibility standard (§300.203(a)) and the compliance standard (§300.203(b)).

Question A-2: What is the eligibility standard?

Answer: The eligibility standard in §300.203(a) requires that, in order to find an LEA eligible for an IDEA Part B subgrant for the upcoming fiscal year, the SEA must determine that the LEA has budgeted for the education of children with disabilities at least the same amount of local, or State and local, funds, as it actually spent for the education of children with disabilities during the most recent fiscal year for which information is available.

The eligibility standard is discussed in more detail in Section B of this document.

Question A-3: What is the compliance standard?

Answer: The compliance standard in §300.203(b) prohibits an LEA from reducing the level of expenditures for the education of children with disabilities made by the LEA from local, or State and local, funds below the level of those expenditures from the same source for the preceding fiscal year. In other words, an LEA must maintain (or increase) the amount of local, or State and local, funds it spends for the education of children with disabilities when

compared to the preceding fiscal year.

The compliance standard is discussed in more detail in Section C of this document.

Question A-4: What are the four methods an LEA may use to meet the eligibility and compliance standards?

Answer: An LEA may use the following four methods to meet both the eligibility and compliance standards:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

Question A-5: What does “per capita” mean in the context of the LEA MOE regulations?

Answer: Per capita, in the context of the LEA MOE regulations, refers to the total amount of local, or State and local, funds either budgeted or expended by an LEA for the education of children with disabilities, divided by the number of children with disabilities served by the LEA.

Question A-6: What is the “comparison year”?

Answer: The “comparison year” refers to the fiscal year that an LEA uses to determine the amount of local, or State and local, funds it must budget or spend, in order to meet both the LEA MOE eligibility and compliance standards. The comparison year differs for each standard, and may be affected by the Subsequent Years rule. The comparison year is discussed more fully in B-2 and C-3.

A. All regulatory citations in this document refer to the IDEA Part B regulations in 34 CFR part 300, unless otherwise noted.

Question A-7: What is the Subsequent Years rule?

Answer: The Subsequent Years rule prescribes the level of effort an LEA must meet in the year after the LEA fails to maintain effort. The Department first set out the Subsequent Years rule on April 4, 2012 in a letter to Ms. Kathleen Boundy, available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-04-04-2012.pdf>. At that time, the Department clarified that the level of effort that an LEA must meet in the year after it fails to maintain effort is the level of effort that would have been required in the absence of that failure and not the LEA's actual reduced level of expenditures in the fiscal year in which it failed to meet the compliance standard. Therefore, the Department's expectation is that SEAs and LEAs have been complying with this interpretation since FY 2012-2013. Since that time, Congress included the Subsequent Years rule in the 2014 Appropriations Act⁶ and the 2015 Appropriations Act.⁷

Example: For FY 2014-2015, an LEA must have maintained at least the same level of expenditures as it did in the preceding fiscal year, FY 2013-2014, unless it did not meet the compliance standard in that year. If it did not meet the compliance standard in FY 2013-2014, the LEA must determine what it should have spent in FY 2013-2014, which is the amount that it actually spent in the preceding fiscal year, FY 2012-2013.

For further examples illustrating the Subsequent Years rule, see Tables B and D in this guidance and Tables 1–4 and 8 in Appendix E of the final regulations.

Question A-8: May an LEA meet the compliance and/or eligibility standards using local funds only if it spent zero local dollars in the comparison year?

Answer: An LEA, including an LEA that has not spent any local funds for the education of children with disabilities since the MOE requirement was enacted in 1997, may use any of the four methods to meet the compliance and eligibility standards. Therefore, an LEA that has spent \$0 in local funds for the education of children with disabilities may meet the compliance and eligibility standards by continuing to budget and spend \$0 in local funds for the education of children with disabilities. However, the Department believes that there are very few instances where LEAs have expended \$0 in local funds for the education of children with disabilities, and reminds LEAs that they must continue to make FAPE available to all eligible children with disabilities. In addition, when demonstrating that they meet the compliance and eligibility standards using any of the four methods, LEAs must be able to provide auditable data regarding their expenditures from the relevant sources in all relevant years. Simply because an LEA does not account for local funds separately from State funds does not mean that the LEA expends \$0 in local funds for the education of children with disabilities.

⁶ Pub. L. No. 113-76, 128 Stat. 5, 394 (2014).

⁷ Pub. L. No. 113-235, 128 Stat. 2130, 2499 (2014).

Question A-9: May LEAs use their local, or State and local, funds to meet both the LEA MOE requirement and a matching or MOE requirement for a separate Federal program (e.g., Medicaid or Vocational Rehabilitation)?

Answer: Yes. In fact, LEAs must include the amount of local only, or State and local, funds spent for the education of children with disabilities when calculating the level of effort required to meet the eligibility and compliance standards, even if those local only, or State and local, funds are also used to meet a matching requirement in another Federal program. The IDEA does not impose a matching requirement. In other words, an LEA that expends local, or State and local, funds for the education of children with disabilities must include those funds in its LEA MOE calculations regardless of whether it uses those same funds to comply with a matching or other MOE requirement (of course, an LEA that uses the local funds only method to meet the LEA MOE requirement need not include State funds in its LEA MOE calculations).

Example: An LEA expended \$4,000 in local funds for the education of children with disabilities in FY 2013–2014. It properly used these funds to meet a matching or MOE requirement for Medicaid. The LEA must include the \$4,000 in local funds in its LEA MOE calculation for FY 2013–2014 even though it uses those same funds to meet a matching requirement for Medicaid

B. ELIGIBILITY STANDARD

Authority: §300.203(a)

Question B-1: What is the eligibility standard?

Answer: The eligibility standard describes the MOE requirement that an LEA must meet as a condition of receiving an IDEA Part B Subgrant. When reviewing an LEA's application for an IDEA Part B Subgrant, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount as the LEA spent for that purpose from the same source in the most recent fiscal year for which information is available, subject to the Subsequent Years rule.

As indicated in A-4, an LEA may meet the eligibility standard using any one of the following methods:

(v)Local funds only;

(vi)The combination of State and local funds;

(vii)Local funds only on a per capita basis; or

(viii) The combination of State and local funds on a per capita basis.

The following table illustrates how the different methods work in practice: **Table A.**
Example of How an LEA May Meet the Eligibility Standard in 2016-2017 Using

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count	Notes
2014–2015	\$500*	\$1,000*	\$50*	\$100*	10	*The LEA met the compliance standard using all 4 methods.
2015–2016						Final information not available at time of budgeting for 2016–2017.
How much must the LEA budget for 2016–2017 to meet the eligibility standard in 2016–2017?	\$500	\$1,000	\$50	\$100		When the LEA submits a budget for 2016–2017, the most recent fiscal year for which the LEA has information is 2014–2015. It is not necessary for the LEA to consider information on expenditures for a fiscal year prior to 2014–2015 because the LEA maintained effort in 2014–2015. Therefore, the Subsequent Years rule in §300.203(c) is not applicable.

Question B-2: What is the comparison year for the LEA MOE eligibility standard?

Answer: The comparison year for the LEA MOE eligibility standard, regardless of the method used to meet the eligibility standard, is the most recent fiscal year for which information is available. Thus, in the example in Table A, above, the comparison year is FY 2014-2015. However, if the LEA had an MOE failure in FY 2014-2015, the SEA would be required to identify the correct comparison year in order to determine whether the LEA had met the eligibility standard in FY 2016-2017. Utilizing the Subsequent Years rule, the SEA would determine the most recent fiscal year in which the LEA met MOE and for which it has information available. For example, if the LEA met MOE in FY 2013-2014, FY 2013-2014 would be the comparison year for determining whether the LEA met the eligibility standard in FY 2016-2017.

Question B-3: What is the “most recent fiscal year for which information is available”?

Answer: The “most recent fiscal year for which information is available” is the most recent fiscal year for which an LEA has final data on the amount the LEA

spent in local, or State and local, funds for the education of children with disabilities. Generally, an LEA applies for an IDEA Part B subgrant in the spring. At the time of the application, the LEA typically is finalizing its budget for the next fiscal year (the “budget year”), and will not have final information on its level of expenditures for the fiscal year immediately preceding the budget year because that fiscal year has not yet ended. Therefore, the most recent fiscal year for which information is available is frequently two fiscal years prior to the budget year.

For example, in Table B below, in June 2017 an SEA reviews an LEA’s application for an IDEA Part B subgrant for FFY 2017 Part B funds, available on July 1, 2017, which means that the SEA reviews the amount the LEA has budgeted for FY 2017-2018. The most recent fiscal year for which information could be available is FY 2015-2016. This is because FY 2016-2017 has not yet concluded and, therefore, final expenditure data are not yet available for that year.

In the example in Table B below, if the LEA failed to maintain effort in FY 2015-2016, the SEA would examine the most recent fiscal year for which information is available, which would likely be FY 2014-2015. Assuming the LEA maintained effort in FY 2014-2015, the SEA would compare the amount budgeted for the education of children with disabilities for FY 2017-2018 to the amount actually expended for that purpose from the same source in FY 2014-2015. This is reflected in Table B, below.

**Table B. Example of How an LEA May Meet the Eligibility Standard in 2017-2018
Using Different Methods and the Application of the Subsequent Years Rule
(Same table as Table 8 in Appendix E of the final regulations)**

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count	Notes
2014–2015	\$500*	\$1,000*	\$50*	\$100*	10	
2015–2016	\$450	\$1,000*	\$45	\$100*	10	
2016–2017						Final information not available at time of budgeting for 2017-2018.
How much must the LEA budget for 2017–2018 to meet the eligibility standard in 2017–2018?	\$500	\$1,000	\$50	\$100		If the LEA seeks to use a combination of State and local funds, or a combination of State and local funds on a per capita basis, to meet the eligibility standard, the LEA does not consider information on expenditures for a fiscal year prior to 2015–2016 because the LEA maintained effort in 2015–2016 using those methods. However, if the LEA seeks to use local funds only, or local funds only on a per capita basis, to meet the eligibility standard, the LEA must use information on expenditures for a fiscal year prior to 2015–2016 because the LEA did not maintain effort in 2015–2016 using either of those methods, per the Subsequent Years rule. That is, the LEA must determine what it should have spent in 2015–2016 using either of those methods, and that is the amount that the LEA must budget in 2017–2018.

*LEA met MOE using this method.

Question B-4: What process should an SEA use to determine an LEA's eligibility for a Part B Subgrant?

Answer: For the eligibility standard, an SEA has discretion to determine the type and amount of information it requires an LEA to submit in order to determine whether the LEA has met the eligibility standard, as long as the SEA has sufficient information to determine on an annual basis that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available (subject to the Subsequent Years rule): (i) local funds only; (ii) the combination of State and local funds; (iii) local funds only on a per capita basis; or (iv) the combination of State and local funds on a per capita basis.

It is not necessary for the SEA to review a detailed budget, so long as the SEA has sufficient information to determine if the LEA meets the eligibility standard. For example, these regulations do not require LEAs to submit budgets broken down by object codes or line items. However, the Department would expect an LEA to submit information on the amount of funds budgeted for the education of children with disabilities and any additional information an SEA would need to determine eligibility (for example, an explanation of any applicable exceptions or adjustment, the relevant numbers of children with disabilities if the LEA seeks to establish eligibility on a per capita basis, etc.)

Question B-5: May an LEA change the method it uses to establish eligibility from one year to the next?

Answer: Yes. An LEA may change methods to establish eligibility from one year to the next, as long as the LEA uses the same method for calculating the amount it spent in the comparison year and the amount it must budget in the year for which it is establishing eligibility. For example, an LEA met the MOE eligibility standard using local funds only in FY 2015-2016. That LEA wishes to meet the MOE eligibility standard using a combination of State and local funds in FY 2016-2017. In order to do so, the LEA calculates the amount it expended for the education of children with disabilities using a combination of State and local funds in the most recent fiscal year in which the LEA met MOE using that method and for which information is available. As a practical matter, many LEAs will meet the eligibility standard for a fiscal year using more than one method.

Question B-6: May an LEA use a different method to establish eligibility than it used in the comparison year to meet the compliance standard?

Answer: Yes. When establishing eligibility, an LEA is not required to use the same method it used to meet the compliance standard in the most recent fiscal year for which information is available. When an LEA is budgeting for the education of children with disabilities, the LEA selects a method by which it intends to meet the eligibility standard. If the LEA met the compliance standard using

the same method in the most recent fiscal year for which information is available, the LEA must budget at least that amount (after taking into consideration the exceptions and adjustment in §§300.204 and 300.205, as permitted by §300.203(a)(2)) in order to meet the eligibility standard.

Pursuant to the Subsequent Years rule in §300.203(c), if the LEA did not meet the compliance standard using that method in the most recent fiscal year for which information is available, the LEA determines the amount that the LEA should have spent for the education of children with disabilities using that same method in the most recent fiscal year for which information is available. In that case, the LEA must budget at least that amount (after taking into consideration the exceptions and adjustment in §§300.204 and 300.205, as permitted by §300.203(a)(2)) in order to meet the eligibility standard.

For example, an LEA seeks to use a combination of State and local funds on a per capita basis to meet the eligibility standard in FY 2016-2017. The LEA determines the amount it expended for the education of children with disabilities using that same method in the most recent fiscal year for which information is available, which, in this case, is FY 2014-2015. The LEA determines that it met the compliance standard using the same method in FY 2014-2015. Therefore, after taking into account the exceptions and adjustment in §§300.204 and 300.205, the LEA determines that, in order to meet the eligibility standard in FY2016-2017 using a combination of State and local funds on a per capita basis, it must budget for FY 2016-2017 at least the same amount it spent in FY 2014-2015 using the same method.

Question B-7: How does an LEA establish eligibility if it did not receive an IDEA Part B subgrant in “the most recent fiscal year for which information is available”?

Answer: In such a case, the LEA uses the comparison year in §300.203(a)(1), which is “the most recent fiscal year for which information is available,” even if the LEA did not receive an IDEA Part B subgrant in that year. For example, an LEA received an IDEA Part B subgrant in 2013-2014, but did not receive one in 2015-2016. When seeking to establish eligibility for a subgrant in FY 2017-2018, the LEA determines that the most recent fiscal year for which information is available is FY 2015-2016. The LEA must budget for FY 2017-2018 at least the same amount that it expended in local only, or State and local, funds, for the education of children with disabilities in FY 2015-2016.

Question B-8: Is an LEA required to provide budget amendments to the SEA if its expenditures change during a fiscal year, after the SEA determines that the LEA is eligible for a Part B subgrant for that fiscal year?

Answer: No. Once an SEA has determined an LEA’s eligibility, the LEA does not need to provide amendments that reflect changes in expenditures in order to

remain eligible for that year.

Question B-9: What happens if an LEA does not meet the eligibility standard?

Answer: If an SEA determines that an LEA does not meet the MOE eligibility standard using any of the four eligibility methods in §300.203(a), the SEA must provide the LEA with reasonable notice that the SEA has determined the LEA not eligible for an IDEA Part B subgrant and provide the LEA an opportunity for a hearing, pursuant to §300.221. If the SEA determines that the LEA is not eligible to receive a Part B subgrant for that fiscal year, the SEA retains the Part B subgrant that the LEA would have received, and the SEA is required to provide special education and related services directly to children with disabilities residing in the area served by that LEA pursuant to §300.227.

C. COMPLIANCE STANDARD

Authority: §300.203(b)

Question C-1: What is the compliance standard?

Answer: The compliance standard is an expenditure test to determine whether an LEA, in fact, met the requirement to maintain effort in a particular fiscal year. The compliance standard prohibits LEAs from reducing the level of expenditures from local, or State and local, funds for the education of children with disabilities below the level of those expenditures made by the LEA for that purpose from the same source for the preceding fiscal year, except as provided in §§300.204 and 300.205. In other words, an LEA must maintain (or increase) the amount of local, or State and local funds, it spends for the education of children with disabilities when compared to the preceding fiscal year, except as provided in §§300.204 and 300.205.

Question C-2: What are the four methods by which an LEA may meet the compliance standard?

Answer: As indicated in A-4, an LEA may meet the compliance standard using any one of the following methods:

- (i) Local funds only;
- (ii) The combination of State and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of State and local funds on a per capita basis.

The table below provides an example of how an LEA meets or does not meet the LEA MOE compliance standard using alternate methods from year to year without using the exceptions or adjustment in §§ 300.204 and 300.205.

Table C. Example of How an LEA May Meet the Compliance Standard Using Alternate Methods from Year to Year (this table is Table 5 in Appendix E of the final regulations)

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count
2015–2016	\$500*	\$950*	\$50*	\$95*	10
2016–2017	\$400	\$950*	\$40	\$95*	10
2017–2018	\$500*	\$900	\$50*	\$90	10
*LEA met compliance standard using this method.					

Question C-3: What is the comparison year for the LEA MOE compliance standard?

Answer: The comparison year for the compliance standard is “the preceding fiscal year.” However, due to the Subsequent Years rule in §300.203(c), the Department is, in effect, defining “the preceding fiscal year” to mean the last fiscal year in which the LEA met MOE, regardless of whether the LEA is seeking to establish compliance based on local funds only, or based on State and local funds.

The Subsequent Years rule does not prevent an LEA from using any of the four methods to meet the compliance standard in §300.203(b). However, an LEA that wishes to meet the compliance standard in a fiscal year using one particular method must be able to identify the amount of funds that the LEA expended in the most recent fiscal year in which the LEA met the compliance standard using that same method.

The table below illustrates how to calculate the required level of effort when an LEA fails to meet MOE in the preceding fiscal year.

Table D. Example of Level of Effort Required to Meet MOE Compliance Standard in Year Following Year in Which LEA Did Not Meet MOE Compliance Standard
(this table is Table 4 in Appendix E of the final regulations)

Fiscal Year	Actual level of effort	Required level of effort	Notes
2012–2013	\$100	\$100	LEA met MOE.
2013–2014	\$90	\$100	LEA did not meet MOE.
2014–2015	\$90	\$100	LEA did not meet MOE. Required level of effort is \$100 despite LEA’s failure in 2013–2014.
2015–2016	\$110	\$100	LEA met MOE.
2016–2017	\$100	\$110	LEA did not meet MOE. Required level of effort is \$110 because LEA expended \$110, and met MOE, in 2015–2016.
2017–2018		\$110	Required level of effort is \$110, despite LEA’s failure in 2016–2017.

Question C-4: May an LEA switch methods from year to year to meet the compliance standard?

Answer: Yes. LEAs may change methods to establish compliance from one year to the next as long as the LEA is using the same method for comparing the expenditures in the comparison year to the expenditures in the year for which it is establishing compliance, and the LEA is able to provide auditable data to document that it met the compliance standard using that method in the comparison year.

For example, an LEA met the compliance standard in FY 2017-2018 using a combination of State and local funds, and using a combination of State and local funds on a per capita basis. However, during a compliance review for FY 2017-2018, the LEA provided data to the SEA demonstrating only that it met the compliance standard for FY 2017-2018 using a combination of State and local funds on a per capita basis. This data would be sufficient for the SEA to find that the LEA met the compliance standard. Subsequently, the State conducts a compliance review to determine if the LEA met the compliance standard in the next year, FY 2018-2019. The LEA provides information to the State that demonstrates that it met the compliance standard in FY 2018-2019 using a combination of State and local funds. In order to demonstrate that it met the compliance standard using that method, the LEA provides to the State the amount of State and local funds that the LEA spent for the education of children with disabilities in FY 2017-2018 and in FY 2018-2019 so that the State is comparing each year’s expenditures using the same method.

The following table demonstrates how an LEA may meet the compliance standard using alternate methods from year to year in years that the LEA used the exceptions or adjustment in §§ 300.204 and 300.205

Table E. Example of How an LEA May Meet the Compliance Standard Using Alternate Methods from Year to Year and Using Exceptions or Adjustment under §§300.204 and 300.205 (this table is Table 6 in Appendix E of the final regulations)

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count
2015–2016	\$500*	\$950*	\$50*	\$95*	10
2016–2017	\$400	\$950*	\$40	\$95*	10
2017–2018	\$450* In 2017-2018, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$500 in local funds only. In 2017-2018, the LEA properly reduced its expenditures, per an exception in §300.204, by \$50, and therefore, was required to spend at least \$450 in local funds only (\$500 from 2015-2016 per Subsequent Years rule – \$50 allowable reduction per an exception under §300.204).	\$1,000*	\$45* In 2017-2018, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$50 in local funds only on a per capita basis. In 2017-2018, the LEA properly reduced its aggregate expenditures, per an exception in §300.204, by \$50. \$50/10 children with disabilities in the comparison year (2015-2016) = \$5 per capita allowable reduction per an exception under §300.204. \$50 local funds only on a per capita basis (from 2015-2016 per Subsequent Years rule) – \$5 allowable reduction per an exception under §300.204 = \$45 local funds only on a per capita basis to meet MOE.	\$100*	10

Table E. Example of How an LEA May Meet the Compliance Standard Using Alternate Methods from Year to Year and Using Exceptions or Adjustment under §§300.204 and 300.205 (this table is Table 6 in Appendix E of the final regulations)

Fiscal Year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child Count
2018–2019	\$405 In 2018-2019, the LEA was required to spend at least the same amount in local funds only that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$450 in local funds only. In 2018-2019, the LEA properly reduced its expenditures, per an exception in §300.204 by \$10 and the adjustment in §300.205 by \$10. Therefore, the LEA was required to spend at least \$430 in local funds only. (\$450 from 2017-2018 – \$20 allowable reduction per an exception and the adjustment under §§300.204 and 300.205).	\$1,000* Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds, the LEA met MOE.	\$45* In 2018-2019, the LEA was required to spend at least the same amount in local funds only on a per capita basis that it spent in the preceding fiscal year, subject to the Subsequent Years rule. Therefore, prior to taking any exceptions or adjustment in §§300.204 and 300.205, the LEA was required to spend at least \$45 in local funds only on a per capita basis. In 2018-2019, the LEA properly reduced its aggregate expenditures, per an exception in §300.204 by \$10 and the adjustment in §300.205 by \$10. \$20/10 children with disabilities in the comparison year (2017-2018) = \$2 per capita allowable reduction per an exception and the adjustment under §§300.204 and 300.205. \$45 local funds only on a per capita basis (from 2017-2018) – \$2 allowable reduction per an exception and the adjustment under §§300.204 and 300.205 = \$43 local funds only on a per capita basis required to meet MOE. Actual level of effort is \$405/9 (the current year child count).	\$111.11* Because the LEA did not reduce its expenditures from the comparison year (2017-2018) using a combination of State and local funds on a per capita basis (\$1,000/9 = \$111.11 and \$111.11 > \$100), the LEA met MOE.	9

*LEA met MOE using this method.

NOTE ABOUT TABLE: When calculating any exception(s) and/or adjustment on a per capita basis for the purpose of determining the required level of effort, the LEA must use the child count

from the comparison year, and not the child count of the year in which the LEA took the exception(s) and/or adjustment. When determining the actual level of effort on a per capita basis, the LEA must use the child count for the current year. For example, in 2018-2019, the LEA uses a child count of 9, not the child count of 10 in the comparison year, to determine the actual level of effort.

Question C-5: May an LEA use a different method to meet the compliance standard in a fiscal year that it used to meet the eligibility standard for that same year?

Answer: Yes. An LEA is not required to use the same method to meet the compliance standard in a fiscal year that it used to meet the eligibility standard for that same year. For example, if an LEA meets the eligibility standard for FY 2016-2017 using local funds only, it is not required to meet the compliance standard for FY 2016-2017 using local funds only. Likewise, an LEA is not required to use the same method to meet the eligibility standard in a subsequent year that it used to meet the compliance standard in a preceding fiscal year. For example, if an LEA met the compliance standard for FY 2016-2017 using a combination of State and local funds, the LEA is not required to meet the eligibility standard for FY 2017-2018 using a combination of State and local funds.

D. EXCEPTIONS AND ADJUSTMENT/FLEXIBILITY

Authority: §§300.204 and 300.205

Question D-1: What are the allowable exceptions to the LEA MOE requirement?

Answer: Under §300.204, there are five instances where an LEA may reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year (for the compliance standard), and below the level of those expenditures for the most recent fiscal year for which information is available (for the eligibility standard). They are:

- A.** The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel (e.g., special education teachers, speech pathologists, paraprofessionals assigned to work with children with disabilities);
- B.** A decrease in the enrollment of children with disabilities;
- C.** The termination of the obligation of the agency, consistent with IDEA Part B, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—
 - (1) Has left the jurisdiction of the agency;
 - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (3) No longer needs the program of special education;

- D.** The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities; and
- E.** The assumption of cost by the high cost fund operated by the SEA under §300.704(c).

Question D-2: May an LEA apply the exceptions in §300.204 and the adjustment in §300.205 to meet both the eligibility and compliance standards?

Answer: Yes. An LEA may apply the exceptions in §300.204 and the adjustment in §300.205 to meet both the eligibility and compliance standards. When determining the amount of funds that an LEA must budget to meet the eligibility standard, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment that the LEA: (i) took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and (ii) reasonably expects to take in the fiscal year for which the LEA is budgeting.

Question D-3: May an LEA reduce its required level of effort by taking more than one exception in the same fiscal year?

Answer: Yes, an LEA may reduce its required level of expenditures for the education of children with disabilities by taking more than one exception in the same fiscal year. For example, an LEA may reduce its level of expenditures for the education of children with disabilities because of the voluntary departure of a special education teacher, and further reduce its level of effort for the same fiscal year because of the termination of the LEA's obligation to provide a program of special education to a particular child with a disability that is an exceptionally costly program because the child leaves the jurisdiction of the LEA. LEAs must maintain documentation to demonstrate the LEA properly took the exceptions.

Question D-4: How does taking the exceptions in §300.204 and/or the adjustment in §300.205 affect the required amount of expenditures that an LEA must make in a subsequent year?

Answer: If an LEA properly takes the exceptions or the adjustment to reduce the level of local, or State and local, expenditures otherwise required in a fiscal year, the LEA would be required in subsequent fiscal years to maintain effort at the reduced level – except to the extent that the LEA increases the actual level of expenditures above the required level of expenditures for that fiscal year. In addition, the LEA's actual level of expenditures in a preceding fiscal year, and not the reduced level of expenditures that the LEA could have spent had it taken all of the exceptions and the adjustment permitted by §§300.204 and 300.205, is the level of expenditures required of the LEA in a future fiscal year (which may be affected by the Subsequent Years rule).

The following table illustrates how taking, or not taking, an allowable exception or adjustment, and an increase in actual expenditures, affect the required level of effort in subsequent years.

Table F. Comparison of Required Levels of Effort for Two Hypothetical LEAs				
	Actual FY 2015–2016 Expenditures Using a Combination of State and Local funds	Allowable Exception in \$300.204 Taken in FY 2016–2017	Actual FY 2016–2017 Expenditures Using a Combination of State and Local funds	Required Level of Effort Using a Combination of State and Local Funds in FY 2017–2018
LEA #1	\$250,000*	\$10,000	\$240,000*	\$240,000
LEA #2	\$250,000*	\$10,000	\$260,000*	\$260,000
* LEA met MOE.				

E. CONSEQUENCES OF LEA MOE FAILURE

Authority: §300.203(d); section 452 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234a)

Questions E-1: What are the consequences of an LEA’s failure to meet the MOE compliance standard?

Answer: If an LEA fails to meet the MOE compliance standard, the SEA is liable in a recovery action under section 452 of GEPA (20 U.S.C. 1234a) to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in that fiscal year, or the amount of the LEA’s IDEA Part B subgrant in that fiscal year, whichever is lower. Table G shows how to determine the amount of a required recovery based on an LEA’s failure to meet the MOE compliance standard.

Fiscal year	Local funds only	Combination of State and local funds	Local funds only on a per capita basis	Combination of State and local funds on a per capita basis	Child count	Amount of IDEA Part B Subgrant
2015–2016	*\$500	*\$950	*\$50	*\$95		Not relevant
2016–2017	\$400	\$750	\$40	\$75	10	\$50
Amount by which an LEA failed to maintain its level of expenditures in 2016-2017.	\$100	\$200	\$100 (the amount of the failure equals the amount of the per capita shortfall (\$10) times the number of children with disabilities in 2016–2017 (10)).	\$200 (the amount of the failure equals the amount of the per capita shortfall (\$20) times the number of children with disabilities in 2016–2017 (10)).		

The SEA determines that the amount of the LEA’s failure is \$100 using the calculation method that results in the lowest amount of a failure. The SEA’s liability is the lesser of the four calculated shortfalls and the amount of the LEA’s Part B subgrant in the fiscal year in which the LEA failed to meet the compliance standard. In this case, the SEA must return \$50 to the Department because the LEA’s IDEA Part B subgrant was \$50, and that is the lower amount.

Question E-2: How do the GEPA requirements interact with LEA MOE?

Answer: Under 20 U.S.C. 1234b, a failure to comply with expenditure requirements, including the IDEA’s LEA MOE requirement, is a harm to an identifiable Federal interest. If an LEA fails to meet the MOE requirement, the SEA is liable in a recovery action for the amount that is proportionate to the extent of the harm the violation caused to the identifiable Federal interest – that is, the amount by which the LEA failed to maintain its level of expenditures for the education of children with disabilities, or the amount of the LEA’s Part B subgrant, whichever is lower. The SEA is responsible for ensuring that LEAs receiving an IDEA Part B subgrant comply with all applicable requirements of that statute and its implementing regulations, including the MOE requirement. If an LEA, in a particular fiscal year, fails to meet the MOE requirement, the Department has authority to take steps to recover the appropriate amount of funds from the SEA. The SEA, in turn, following applicable State procedures, could seek reimbursement from the LEA. See July 26, 2006, letter to Ms. Carol Ann Baglin, available at <http://www2.ed.gov/policy/speced/guid/idea/letters/2006-3/baglin072606moe3q2006.pdf>.

Question E-3: Why does the SEA have to pay funds when an LEA fails to meet its MOE requirement?

Answer: The SEA (acting on behalf of the State), not the LEA, is the grantee in the IDEA Part B program. As a condition of eligibility for an IDEA Part B grant, States must provide an assurance to the Department that the SEA is responsible for ensuring that, among other things, all requirements of Part B are met. IDEA § 612(a)(11)(A)(i) (20 U.S.C. 1412(a)(11)(A)(i)). SEAs may minimize LEA noncompliance by carefully reviewing the LEA's application for an IDEA Part B subgrant to determine if the LEA meets the eligibility standard, by monitoring for compliance on a regular basis, and by providing technical assistance to LEAs. SEAs that find an LEA is failing to comply with the MOE requirement may take further enforcement action as provided in §300.222.

Question E-4: Have the revised LEA MOE regulations modified the Department's position on the consequences of an LEA's failure to maintain effort?

Answer: No. The revised regulations cite to the recovery of funds provision in GEPA, a bill that was enacted in 1968. We included a provision addressing the consequences of an LEA's failure to maintain effort in the proposed and final regulations not because this is a change in law, but to highlight the importance of the LEA MOE requirement and the significance of the remedies for a failure to comply. In addition, the comments to the proposed LEA MOE regulations indicated that some SEAs and LEAs may not have been aware of the consequence of an LEA's failure to meet the MOE compliance standard

Question E-5: How should funds be remitted to the Department?

Answer: If the SEA is remitting \$100,000 or more, it should use the FEDWIRE system. The FEDWIRE form and instructions are posted on <http://www2.ed.gov/programs/safra/fed-wire-form.pdf>. A copy of the form with a cover letter should be sent to the Office of Special Education Programs (OSEP). The cover letter should identify that these funds are being sent to the Department to pay back the Federal government for the failure of an LEA (or LEAs) to meet the MOE requirement under §300.203, are not Federal funds, and are not tied to a particular Federal grant award.

For payments less than \$100,000 as a result of an audit or monitoring finding, the SEA should cut a check and send it to a "lock box" in St. Louis, with a copy to OSEP of both the cover letter and the check. The cover letter should identify that these funds are being sent to the Department to pay back the Federal government for the failure of an LEA (or LEAs) to meet the MOE requirement under §300.203, are not Federal funds, and are not tied to a particular Federal grant award. Make the check payable to "Accounts Receivable U.S. Department of Education."

If the repayment is a result of an audit or monitoring finding, the check

should be mailed to the following address:

U.S. Department of Education
P.O. Box 979026
St. Louis, MO 63197-9000
ATTN: Accounts Receivable Group/OCFO

If the repayment is made on a voluntary basis, due to the State identifying noncompliance, the check should be mailed to the following address:

U.S. Department of Education
P.O. Box 979053
St. Louis, MO 63197-9000
ATTN: Accounts Receivable Group/OCFO

The letter should advise that the funds be posted to "Miscellaneous Receipts" in the unbilled lock box.

OSEP MOE Policy Letter #1

Dated July 26, 2006

Carol Ann Baglin, Ed.D.
Assistant State Superintendent
Division of Special Education/Early Intervention Services
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595

Dear Dr. Baglin,

This is in response to your electronic mail transmission (e-mail) of May 24, 2006, to Martin Benton, a member of my staff in the United States Department of Education's (Department's) Office of Special Education Programs (OSEP). In your e-mail, you asked for clarification on several questions that you had concerning the maintenance of effort requirements in Part B of the Individuals with Disabilities Education Act. (Part B of IDEA), as amended, 1400 U.S.C. §1400 et. seq. See also: 34 CFR §§300.231-.233¹. Below are responses to each question contained in your e-mail.

Question: Is the State obligated to ensure that each LEA [local educational agency] meets the maintenance of effort (MOE)?

OSEP's Response: An LEA is eligible for a subgrant under IDEA if it provides its State educational agency (SEA) with a plan that assures that the LEA will, among other things, meet the maintenance of effort requirement set out in Section 613(a)(2)(A)(iii) of the IDEA. See: 20 U.S.C. §1413(a). Under Section 612(a)(11)(A)(i) of the IDEA, "the SEA is responsible for ensuring that . . . the requirements of this part are met." Consequently, the SEA is responsible for ensuring that LEAs receiving assistance under the IDEA comply with all applicable requirements of that statute, including the maintenance of effort requirement.

Question: If so, as there is a delay in the calculations in expenditures for the prior years, which year's funds are impacted? As an example, if the local did not meet MOE for the 2003-04 school year, do we require the return of the federal funds made available to the local for the 2003-04 school year, even though these are already spent?

OSEP's Response: The IDEA is a State-administered program under which the Department awards funds to an SEA. The SEA, in turn, as noted above, is responsible for ensuring that the requirements of the Act are met, both by the SEA and the LEAs to which it subgrants funds. Consequently, if an LEA fails to meet its obligation under the maintenance of effort requirement, the Department, because it awarded the IDEA grant to the State, will seek a recovery of funds directly from the State because of this violation. The level of recovery will depend on the degree to which the LEA failed to meet the maintenance of effort requirement, but would not, under any circumstances, exceed the amount of the LEA's IDEA subgrant for the year in question. An SEA cannot use IDEA funds to pay this liability. Instead, it must use non-Federal funds or Federal funds for which accountability to the Federal government is not required.

Question: Do we withhold any unawarded funds for the current year until these past years are resolved, even if we have become aware that the MOE issue covers several years?

OSEP's Response: Generally, if an LEA can provide a credible assurance that in the coming year it will meet the maintenance of effort requirement, it should receive an IDEA subgrant. In addition, an SEA is not authorized

¹ Final regulations implementing the changes to the statute in 2004 have not yet been published and further clarification may be included in the final regulations when they become available. The citations contained in this letter are to the current regulations issued March 12, 1999 and may change when final regulations are published.

to reduce a current year IDEA subgrant as a means of resolving a prior year's maintenance of effort violation. Faced with a history of noncompliance with the MOE requirement, however, the SEA would need to carefully determine whether the LEA will meet the MOE requirement in the coming year (in which case a grant should be made), or whether the SEA should begin an administrative withholding action because it is not convinced that the LEA will meet the MOE requirement for the new year.

Question: What steps must the State take to ensure administrative due process?

OSEP's Response: Section 613(c) and (d) of the IDEA sets forth the requirements SEAs must follow where it is determined that an LEA fails to meet eligibility requirements or is not complying with the IDEA. Additional requirements are at 34 CFR §76.401.

Question: Where an LEA is determined to have not met the MOE requirements, what options are available to the local school systems in response to State action?

OSEP's Response: If an LEA, in a particular fiscal year, failed to meet the maintenance of effort requirement, the Office for Special Education and Rehabilitative Services (OSERS), as noted above, would take steps to recover the appropriate amount of funds from the SEA. The SEA, in turn, following applicable State procedures, could seek reimbursement from the LEA. If the SEA determined that an LEA should not receive a subgrant or that further payments should not be made under a current subgrant because the SEA believes the LEA is not complying with or cannot assure its future compliance with the maintenance of effort requirement, the administrative due process procedures noted in response to the previous question should be followed.

Question: What role does the Department have in the process?

OSEP's Response: The Department is responsible for overseeing the compliance of States with the requirements of the IDEA. As part of that responsibility, OSERS resolves any audit findings involving a particular State, which could involve, among other things, a violation of the maintenance of effort requirement. In those instances where OSERS, through an audit report or some other means, determines that there has been a violation of the maintenance of effort requirement, it is responsible for taking appropriate steps to ensure that IDEA funds are recovered. OSERS carries out this responsibility by issuing a program determination letter that seeks recovery of funds and outlines the procedures the SEA can follow if it wishes to appeal that determination. In addition, OSERS, through its monitoring of SEA implementation of the IDEA, would review the SEA's efforts to ensure compliance by its LEAs with the maintenance of effort requirement, including ensuring the sufficiency of those efforts and providing technical assistance as needed.

This response regarding a policy, question, or interpretation under Part B of the Individuals with Disabilities Education Act is provided as informal guidance, is not legally binding, is issued in compliance with the requirements of 5 U.S.C. 553, and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

I hope that the answers to the above questions provide the information that you need. If you need further assistance, please contact Ruth Ryder at (202) 245-7513 or Martin Benton at (202) 245-7270.

Sincerely,

Alexa Posny, Ph.D.
Director
Office of Special Education
Programs



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 16 2011

Dr. Bill East, Executive Director
National Association of State Directors of
Special Education, Inc.
1800 Diagonal Road, Suite 320
Alexandria, Virginia 22314

Dear Dr. East:

I am writing in response to your letter to me dated February 17, 2011, requesting a written response to your question about the local educational agency (LEA) maintenance of effort (MOE) requirement in 34 CFR §300.203(b).

In your letter, you ask about the following scenario:

An LEA fails to meet their maintenance of effort. As a result, the LEA pays the State educational agency (SEA) an amount equal to the shortage. The SEA then returns the money to the U.S. Department of Education.

Question: In determining the base amount that the LEA must spend the following year, do they maintain the base amount from the previous year, or reset the base amount to reflect the lower amount actually spent the previous year?

Under section 613(a)(2)(A)(iii) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §300.203(a), except as provided in 34 CFR §§300.204 and 300.205, funds provided to an LEA under Part B of the IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year. While the IDEA does not contain a specific provision that addresses the circumstance you raise with respect to LEAs¹, the Department must rely on the plain language of the statute and regulation with regard to the level of expenditures, which provide that an LEA may not reduce its level of expenditures for the education of children with disabilities “below the level of those expenditures for the preceding fiscal year.” See section 613(a)(2)(A)(iii) and 34 CFR §300.203(a). Under this language, the LEA, in the fiscal year immediately following the fiscal year in which it failed to maintain effort, is obligated to expend no less than the amount it expended *in the prior fiscal year* for the education of children with disabilities from either local funds only, or from State and local funds. It is not obligated to expend at least the amount it expended in the last fiscal year for which it met the maintenance of

¹ With respect to State-level maintenance of financial support, the IDEA specifically addresses what level of support the State must maintain in a year following a year in which the State fails to maintain its required level of support. Section 612(a)(18)(D) provides that the State’s level of support remains the level “that would have been required in the absence of” the failure to maintain support.

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Appendix D:

Page 2 – Dr. Bill East, Executive Director


effort requirement. In other words, each year's LEA maintenance of effort obligation is based on the actual amount expended *in the immediate prior* fiscal year.

As your question assumes, in the event that an LEA fails to maintain its required level of effort, the SEA must pay the Department, from non-Federal funds or funds for which accountability to the Federal Government is not required, the difference between the amount of local, or State and local, funds the LEA should have expended and the amount that it did expend. The SEA may then seek to recoup from the LEA, from non-Federal funds or funds for which accountability to the Federal Government is not required, the amount by which the LEA did not maintain effort. Whether the SEA seeks recovery of those funds from the LEA is a matter of State discretion.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', with a large, stylized loop at the end.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs